FEDERAL TRADE COMMISSION DECISIONS

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FINDINGS, ORDERS, AND STIPULATIONS

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MEMBERS OF THE FEDERAL TRADE COMMISSION AS OF MAY 31, 1941

CHARLES H. MARCH, *Chairman.*

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

GARLAND S. FERGUSON.

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

EWIN L. DAVIS.

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

WILLIAM A. AYRES.

Took oath of office August 23, 1934, 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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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).

[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.

America's Medicine, etc. (Harry S. Benham) (D. C.) 29–1629.
Antisepto Products Co., etc. (Edward L. Jenkins et al.). (D. C.) 29–1637.
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).

[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.

Belmont Laboratories, Inc. (C. C. A.) 28–1941.
103 F. (2d) 538.
Bene & Sons, Inc., John (C. C. A.) 7–612.
299 Fed. 468.
Benham, Harry S. (America's Medicines, 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; 32–1840, 1867.
96 F. (2d) 687; 117 F. (2d) 29.
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; (S. C.) 32–1848.
104 F. (2d) 996; 110 F. (2d) 412; 312 U. S. 349 (61 S. Ct. 580).
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.

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

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.
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.
Chanel, Inc (C. C. A.) 32-1866.
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.
Chesapeake Distilling & Distributing Co (D. C.) 32-1909.
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).
Clein, Max L., et al (C. C. A.) 32-1868.
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.

[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.

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.
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; 32–1870.
108 F. (2d) 470; 110 F. (2d) 72; 118 F. (2d) 562.
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; (S. C.) 32–1856.
114 F. (2d) 80; 312 U. S. 457 (61 S. Ct. 703).

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

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.
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-
113 F. (2d) 583. 722; 31-1846.
George Ziegler Co ..... (C. C. A.) 24-1625.
90 F. (2d) 1007.
Gimbel Bros., Inc ..... (C. C. A.) 32-1820.
116 F. (2d) 578.
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-
92 F. (2d) 677; 304 U. S. 257 (58 S. Ct. 863); 101 F. (2d) 620. 1521, (C. C. A.) 28-1899.
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.)
258 Fed. 314; 253 U. S. 421 (40 S. Ct. 572). 2-564.
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.

[15] For interlocutory matter, see "Memoranda," 28-1964, or 1938 S. & D. 485.
[16] For interlocutory order, see "Memoranda," 20-746, or S. & D. 724.

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.
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.
Hudson Co., The J. L..... (C. C. A.) 32–1889.
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.
J. L. Hudson Co., The..... (C. C. A.) 32–1889.
Johnson Candy Co., Walter H..... (C. C. A.) 21–1195.
78 F. (2d) 717.

[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.

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.
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).
Kidder Oil Co. ..... (C. C. A.) 32–1823.
117 F. (2d) 892.
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 St. 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. 756.
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.

[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.

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. 250).
Mandel Brothers, Inc. et al ..... (C. C. A.) 32–1886.
March of Time Candies, Inc ..... (C. C. A.) 29–1557.
104 F. (2d) 999.
Marietta Mfg. Co ..... (C. C. A.) 15–613.
50 F. (2d) 641.
Marshall Field & Co., et al ..... (C. C. A.) 32–1886.
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.
McKinley-Roosevelt College of Arts and Sciences. ..... (C. C. A.) 32–1878.
McLean & Son, A., et al ..... (C. C. A.) 22–1149; 26–1501; 31–1828.
84 F. (2d) 910; 94 F. (2d) 802.
Mells Manufacturing Co., U. S. *v* ..... (D. C.) 32–1907.
Mennen Co.[25] ..... (C. C. A.) 6–579.
288 Fed. 774.
Mentho-Mulsion, Inc. et al ..... (C. C. A.) 32–1868.
Merit Health Appliance Co. (George S. Mogilner et al.). ..... (D. C.) 32–1900.
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.

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

[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.

Millers National Federation, et al. 23 F. (2d) 968; 47 F. (2d) 428.	(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.
Millinery Creators' Guild, Inc., et al. 109 F. (2d) 175; 312 U. S. 469 (61 S. Ct. 708).	(C. C. A.) 30-1619; (S. C.) 32-1865.
Mills Novelty Co., et al., U. S. ex rel.	(S. C. of D. C.) 22-1137.
Minneapolis, Chamber of Commerce, of, et al.[26] 280 Fed. 45; 13 F. (2d) 673.	(C. C. A.) 4-604, 10-687.
Minter Brothers, etc. 102 F. (2d) 69.	(C. C. A.) 28-1885.
Mishawaka Woolen Mfg. Co. 283 Fed. 1022; 260 U. S. 748 (43 S. Ct. 247).	(C. C. A., S. C.) 5-557.
M. J. Holloway & Co., et al. 84 F. (2d) 910.	(C. C. A.) 22-1149; 31-1829.
Modern Hat Works (Jacob Schachnow)	(C. C. A.) 32-1875.
Mogilner, George S., et al. (Merit Health Appliance Co.).	(D. C.) 32-1900.
Moir, John, et al. (Chase & Sanborn)[27] 12 F. (2d) 22.	(C. C. A.) 10-674.
Montebello Distillers, Inc., U. S. *v.*	(D. C.) 32-1908.
Morrissey & Co., Chas. T., etc. 47 F. (2d) 101.	(C. C. A.) 14-716.
Morton Salt Co.	(C. C. A.) 30-1666.
Mutual Printing Co., U. S. *v.*	(D. C.) 32-1909.
National Association of Counter Freezer Manufacturers et al.	(S. C. of D. C.) 22-1137.
National Biscuit Co.[28] 299 Fed. 733; 18 F. Supp. 667.	(C. C. A.) 7-603; (D. C.) 24-1618.
National Biscuit Co., U. S. *v.* 25 F. Supp. 329.	(D. C.) 27-1697.
National Candy Co. 104 F. (2d) 999.	(C. C. A.) 29-1557.
National Harness Mfrs. Assn. 261 Fed. 170; 268 Fed. 705.	(C. C. A.) 4-539, 3-570.
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. 88 F. (2d) 425.	(C. C. A.) 24-1627; 28-1957; 30-1675.
Neff, George G. (Prostex Co.) 117 F. (2d) 495.	(C. C. A.) 32-1842.
New Jersey Asbestos Co. 264 Fed. 509.	(C. C. A.) 2-553.
Non-Plate Engraving Co.[29] 49 F. (2d) 766.	(C. C. A.) 15-597.

[26] For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.
[27] For interlocutory order, see "Memoranda," 20-744 or S. & D. 718.
[28] For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.
[29] For interlocutory order, see "Memoranda," 28-1965 or 1938 S. & D. 485.

Norden Ship Supply Co., Inc., et al. (Winslow et al.). 277 Fed. 206. (C. C. A.) 4–578.
Northam Warren Corp. 59 F. (2d) 196. (C. C. A.) 16–687.
Nulomoline Co. 254 Fed. 988. (C. C. A.), footnote, 3–542; "Memoranda," 20–740.
Oberlin, Robert C. (Research Products Co.) (D. C.) 29–1626.
Ohio Leather Co.[30] 45 F. (2d) 39. (C. C. A.) 4–699.
Oliver Brothers, Inc., et al. 102 F. (2d) 763. (C. C. A.) 28–1926.
Omega Manufacturing Co., Inc., et al. (D. C.) 30–1717.
Oppenheim, Oberndorf & Co. (Sealpax Co.)[31] 5 F. (2d) 574. (C. C. A.) 9–629.
Ostermoor & Co., Inc.[32] 16 F. (2d) 962. (C. C. A.) 11–642.
Ostler Candy Co. 106 F. (2d) 962. (C. C. A.) 29–1584.
Ozment, C. J., etc. (C. C. A.) 22–1135.
Pacific States Paper Trade Assn. et al. 4 F. (2d) 457; 273 U. S. 52 (47 S. Ct. 255); 88 F. (2d) 1009. (C. C. A.) 8–608; (S. C.) 11–636; (C. C. A.) 24–1631.
Paramount Famous-Lasky Corp.[33] 57 F. (2d) 152. (C. C. A.) 16–660.
Pearsall Butter Co., B. S.[34] 292 Fed. 720. (C. C. A.) 6–605.
Perfect Reconditioned Spark Plug Co., The, et al. (C. C. A.) 32–1891.
Petrie, John (B–X Laboratories and Purity Products Co.), U. S. *v.* (D. C.) 29–1643; 30–1727.
Philip Carey Mfg. Co. et al. 29 F. (2d) 49. (C. C. A.) 12–726.
Pittsburgh Cut Rate Drug Co. (D. C.) 30–1707.
Plantation Chocolate Co., Inc., U. S. *v.* (D. C.) 32–1908.
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. 11 F. (2d) 47. (C. C. A.) 10–661.
Progressive Medical Co., etc. (Blanche Kaplan). (D. C.) 30–1690.
Prostex Co. (George G. Neff) 117 F. (2d) 495. (C. C. A.) 32–1842.
Pure Silk Hosiery Mills, Inc. 3 F. (2d) 105. (C. C. A.) 8–595.
Q. R. S. Music Co.[35] 12 F. (2d) 730. (C. C. A.) 10–683.

[30] For interlocutory order, see "Memoranda," 20–745 or S. & D. 724.
[31] For interlocutory order, see "Memoranda," 20–743 or S. & D. 717.
[32] For interlocutory order, see "Memoranda," 20–744 or S. & D. 720.
[33] For interlocutory order, see "Memoranda," 28–1967 or 1938 S. & D. 487.
[34] For interlocutory order, see "Memoranda," 20–743 or S. & D. 716.
[35] For interlocutory order, see "Memoranda," 20–744 or S. & D. 719.

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.
Queen Chemical Co. (Charles Shrader) (D. C.) 32–1904.
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 (51 S. Ct. 587).
Raymond Bros.–Clark Co. (C. C. A.) 4–625; (S. C.) 7–594.
280 Fed. 529; 263 U. S. 565 (44 S. Ct. 162).
Real Products Corp. et al. (C. C. A.) 25–1685.
90 F. (2d) 617.
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.
Rock, Monica M. (C. C. A.) 32–1845.
117 F. (2d) 680.
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).
Ryan Candy Co. (Southern Premium Manufacturing Co., etc.). (C. C. A.) 22–1143.
83 F. (2d) 1008.
Saks & Co. (C. C. A.) 32–1877.
Sanders, Peter, et al. (The Perfect Reconditioned Spark Plug Co.). (C. C. A.) 32–1891.
Savage Candy Co. (C. C. A.) 25–1705.
92 F. (2d) 1003.
Schachnow, Jacob (Modern Hat Works) (C. C. A.) 32–1875.
Sea Island Thread Co., Inc. (C. C. A.) 11–705.
22 F. (2d) 1019.

[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.

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).
Shrader, Charles (Queen Chemical Co.) (D. C.) 32–1904.
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.
Stadley, Nolan B. (Sterling Appliance Co.) (D. C.) 32–1896.
Standard Container Manufacturers' Association, Inc., et al. (C. C. A.) 32–1879.
119 F. (2d) 262.
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.
Sterling Appliance Co. (Nolan B. Stadley) (D. C.) 32–1896.
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).
Thomas Quilt Factories (C. C. A.) 32-1815.
116 F. (2d) 347.
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.
United Diathermy, Inc. (D. C.) 32-1893.
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 18-663.
U. S. ex rel. Mills Novelty Co. et al. (S. C. of D. C.) 22-1137.
U. S. *v.* Chesapeake Distilling & Distributing Co. (D. C.) 32-1909.
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.* Mells Manufacturing Co. (D. C.) 32-1907.
U. S. *v.* Montebello Distillers, Inc. (D. C.) 32-1908.
U. S. *v.* Mutual Printing Co. (D. C.) 32-1909.
U. S. *v.* National Biscuit Co. (D. C.) 27-1697.
25 F. Supp. 329.
U. S. *v.* Plantation Chocolate Co., Inc. (D. C.) 32-1908.
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, James, et al. (Merit Health Appliance Co.). (D. C.) 32-1900.
Walker's New River Mining Co. (C. C. A.) 21-1213.
79 F. (2d) 457.

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

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.
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.

[41] For interlocutory order, see "Memoranda," 28–1968 or 1938 S. & D. 490.
[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, DECEMBER 1, 1940, to MAY 31, 1941

IN THE MATTER OF

R. M. HOLLINGSHEAD CORPORATION

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

Docket 3661. Complaint, Dec. 10, 1938—Decision, Dec. 2, 1940

UNFAIR METHODS OF COMPETITION—"LIFTING"—WHERE SUBSTANTIAL INJURY TO COMPETITION OR INTENT TO INJURE, BY HARASSING COMPETITORS OR DESTROYING GOOD WILL ADHERING TO THEIR MERCHANDISE, OR EFFECT OF SO INJURING, ETC., NOT SHOWN.

There is no question but that the practice of "lifting" competitors' merchandise from distributors' shelves and disposing of it in a manner which permits its access again into the channels of distribution at distress prices is a practice which is detrimental to competitors, immediate effect of which may be to reduce the possibility of the competitor selling more goods to the distributor, and detrimental effect of which is more apparent when the "lifted" merchandise reappears on the market at reduced prices. Practice, however, in which showing of substantial injury to competition or of an intent or effect of injuring competition by harassing competitors or destroying the good will adhering to their merchandise does not appear, and in which slight injury to competition demonstrated does not approach possible demoralizing effect when made use of to harass and injure competitors, may not constitute unfair method of competition. *Waldes & Co., Inc.*, 8 F. T. C. 305, distinguished.

UNFAIR METHODS OF COMPETITION—"LIFTING"—WHERE SUBSTANTIAL INJURY TO COMPETITION OR INTENT TO INJURE, BY HARASSING COMPETITORS OR DESTROYING GOOD WILL ADHERING TO THEIR MERCHANDISE, OR EFFECT OF SO INJURING, ETC., NOT SHOWN—CREDIT EXCHANGE OFFERS AS MADE AND LIMITED BY MANUFACTURER-SELLER TO DEALER DISTRIBUTORS ON OWN AND OTHER PRODUCTS GENERALLY, BY IT CONSUMED AND JUNKED, AND IN PART RESOLD IN OTHER CHANNELS, AND IN JOB LOT SALES FOR CASH, AT UNDER CURRENT MANUFACTURER PRICES.

Where a corporation engaged in manufacture and interstate sale and distribution of an extensive line of so-called automobile chemicals, including automobile soaps, polishes, top dressings, and other products thus characterized, extended both to old and other cutomers credit exchange privilege under which, among other things, (1) wholesaler or jobber customers, new or old, of its said, or "Whiz Line," or various items thereof, were allowed to select from their own stocks, broadly, any goods of same general classification, regardless of age, condition, or manufacture, for shipment at customer's expense to said corporation at its place of business, and, subject to conditions

below set forth, customer was given credit by corporation for full amount of cost of such items against purchase of items on the "Whiz Line"; (2) credit thus obtained was not available, however, for more than 25 percent of order and had to be taken advantage of within the year; (3) its own goods as well as those of others were available for such use; and (4) it periodically resold, in job lots for cash and on its own warehouse floor, goods thus accumulated and not used or junked by it, including products of a number of manufacturers, to purchasers who were not regular distributors of such new products, and, in some instances, at prices considerably less than original manufacturer's prices for such goods, some of which, thus resold, found their way into channels of trade in which competitors were selling new merchandise:

Held, That practice or practices in question, on basis of slight injury to competition shown, and absent showing of intent to injure competition by harassing competitors or destroying good will adhering to their merchandise, or effect of so injuring, etc., did not constitute unfair methods of competition, and order of dismissal directed.

Before *Mr. Robert S. Hall*, trial examiner.
Mr. Randolph W. Branch for the Commission.
Mr. J. Hector McNeal, 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 R. M. Hollingshead Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of the said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondent, R. M. Hollingshead Corporation, is a corporation organized under the laws of the State of New Jersey and having its office and principal place of business at 840 Cooper Street in the city of Camden, State of New Jersey.

Par. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of manufacturing, distributing, and selling certain products known generally as "automobile chemicals," which include, among other things, polishes, soaps, oils and lubricants, cements, cleaning compounds, top dressings, tire coatings, tube repair kits, radiator solder, brake and shock absorber fluids, and grinding compounds. Many of these products are designated by the preliminary word "Whiz" and are known collectively as respondent's "Whiz Line." The same or similar products are sold by respondent under various other names and markings.

Respondent causes and has caused the said products, when sold, to be transported from its said place of business in the State of New Jersey to purchasers thereof located in States of the United States other than the State of New Jersey and in the District of Columbia.

PAR. 3. In the course and conduct of its said business respondent is now, and has been for more than 2 years last past, in substantial competition with other corporations, and with individuals, firms, and partnerships, engaged in the distribution and sale of products used for the same purposes as those of respondent, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent's automobile chemical business is very large; it maintains branch distributing and sales offices in the cities of St. Paul, Minn., San Francisco, Calif., New York, N. Y., and a warehouse in the city of San Francisco, from and through which, as well as its establishment in Camden, N. J., its products are sold to wholesalers and jobbers of such merchandise generally throughout the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its said business, and for the purposes of inducing the purchase of the "Whiz Line" or separate items thereof by jobbers and wholesalers of such merchandise, creating and maintaining a monopoly in the automobile chemical business and hindering and hampering its competitors in disposing of their wares, respondent has unfairly disparaged competitors and their goods and has endeavored to carry out its monopolistic purposes by the use of the following practices:

(*a*) Respondent agrees with jobbers and wholesalers who are for the first time purchasing stocks of the "Whiz Line" or various items thereof, that it will accept from such jobber or wholesaler any products of a similar character manufactured by others which the jobber or wholesaler selects from his stock, describes in a schedule furnished to respondent and delivers in a single shipment, transportation paid, to respondent at Camden, N. J.

(*b*) Upon receipt of such products, respondent gives to the said jobber or wholesaler credit to the amount of the cost to the jobber or wholesaler of the goods received, provided, however, that such credit will be applicable only within 1 year, only against purchases of items of respondent's "Whiz Line" and only for 25 percent of the amount of such purchases.

(*c*) Merchandise so received by respondent is stored until a substantial amount has accumulated, when it is sold to dealers having places of business in States other than the State of New Jersey and

engaging in the business of purchasing and selling what is known as "distress merchandise," at a figure far below the amount of the credit which respondent has given, as hereinbefore stated, and far below the cost of the same merchandise, to those from whom it was acquired by respondent.

PAR. 6. The capacity, tendency, and effect of said acts and practices of respondent hereinbefore set out, and others of a similar nature, are, and have been: To place those who purchase the said wares from the respondent as aforesaid in a position to reintroduce them or many of them into the channels of trade and commerce at prices below those ordinarily current in their normal and uninterrupted distribution; to unreasonably hinder, hamper, and restrain the manufacturers of the said products in disposing of their new merchandise at their usual current prices, or at any prices, by reason of the availability, to wholesalers and jobbers, of the said wares at such cut prices; to hinder and restrain wholesalers and jobbers who have or might acquire said products from the manufacturers thereof from selling them at the usual and current prices therefor; to demoralize the market of the said manufacturers for their said products and to injure their reputations and those of their goods; to unreasonably lessen, eliminate, restrain, hamper, and suppress competition in the automobile chemical industry; to create in respondent a monoply in the automobile chemical industry and to otherwise operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in the said industry, and to obstruct the natural flow of trade in the channels of commerce between and among the several States of the United States.

PAR. 7. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of competitors of respondent and of the public, have a dangerous tendency to, and have, actually hindered and prevented competition in the sale of automobile chemicals in commerce, 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.

OPINION

Acting pursuant to the authority of the Federal Trade Commission Act, the Commission on December 10, 1938, issued its complaint charging the respondent with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce.

Respondent is engaged in the manufacture and interstate sale and distribution of automobile soaps, polishes, top dressings, and other

products generally known as "automobile chemicals." Various of its products are collectively designated by respondent as its "Whiz Line."

In 1937 or 1938 respondent in the sale of its "Whiz Line" initiated, and thereafter pursued, a practice known as "lifting." Wholesaler or jobber customers of the "Whiz Line," or various of its items, were allowed to select from their own stocks any goods of the same general classification which they chose, with some inconsequential exceptions, regardless of age, conditions, or manufacture. These goods the customer could ship, at his own expense, to respondent, at its place of business at Camden, N. J., furnishing respondent with a statement of their cost to him. Thereupon respondent gave the customer credit for the full amount of such cost, subject to the condition that the credit be applied within 1 year against purchase of items of the "Whiz Line," but only for 25 percent of the amount of such purchases. Thus in order to utilize his credit, a customer who sent in goods that cost him $500 had to purchase $2,000 of "Whiz" items within the year.

This type of agreement was made both with dealers who were carrying "Whiz" items at the time of the transaction, and with dealers who were buying them for the first time, and contemplated return for credit goods manufactured by the respondent or by competitors.

The record shows that the goods thus "lifted" were resold from time to time as they accumulated in respondent's warehouse, although some of them were junked as unsalable, and others were used by respondent in the manufacture of its own goods. Resales were made for cash in job lots usually including the products of a number of manufacturers. The purchasers, who were not regular distributors of new automobile chemicals, took delivery on respondent's warehouse floor and made their own arrangements for the transportation of the goods to their places of business in States other than the State of New Jersey.

Resales were made by the respondent at prices considerably less than the original manufacturer's current prices for the same goods. The purchasers were in consequence able to, and did, resell a portion of the goods to wholesalers and jobbers at less than the manufacturer's current prices. Thus some of the goods found their way into the channels of trade in which the competitors of respondent were selling new merchandise.

There is no question but that the practice of "lifting" competitors' merchandise from distributors' shelves, and disposing of it in a manner which permits its access again into the channels of distribution at distress prices is detrimental to competitors. Its immediate effect may be to reduce the possibility of the competitor selling more goods

to the distributor. A detrimental effect is more apparent when the "lifted" merchandise reappears on the market at reduced prices.

In *Waldes & Co., Inc.*, 8 F. T. C. 305, this Commission found a similar practice to be an unfair method of competition, and ordered the respondent to cease and desist. In the *Waldes* case, *supra*, there was an apparent attempt to harass and injure competitors which does not appear in the instant record. Nor does the slight injury to competition demonstrated here approach the demoralizing effect of the practice found in the *Waldes* case.

In the absence of a showing (as in the *Waldes* case) of substantial injury to competition, or of an intent or effect of injuring competition by harassing competitors or destroying the good will adhering to their merchandise, we cannot conclude that the practices here are unfair methods of competition.

By reason of all of the foregoing, an order will be entered directing that the complaint herein be dismissed.

ORDER DISMISSING COMPLAINT

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, is of the opinion that the complaint herein should be dismissed for the reasons stated in an opinion issued herewith;

It is ordered, That the complaint be, and the same hereby is dismissed.

IN THE MATTER OF

VULCAN LAMP WORKS, INC.

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

Docket 3987. Complaint, Jan. 3, 1940—Decision, Dec. 2, 1940

Where a corporation engaged in manufacturing flashlight and other incandescent electric light bulbs, and in selling same to retail trade, and in importing from Japan glass bulbs and assembling such products, along with other parts, into flashlight lamps, volume of business in which constituted about 3 percent of its total volume—

(*a*) Sold to retail dealers finished lamps referred to, in which said imported glass bulbs, upon the necks of which were imprinted words "Made in Japan" or "Japan," were placed by it in bases which it bought from manufacturers and which bore thereon legend "Made in U. S. A.," with result that said Japanese word or words were entirely concealed and there remained visible only aforesaid legend, with no markings thereon to indicate that bulbs in question and basic part of such lamps were of Japanese or foreign, rather than domestic, origin; and

(*b*) Placed such lamps, in packing and arranging same for shipment to retailers and for display and resale by such dealers to purchasing public, in cartons and on cards bearing legend "Made in U. S. A." or "American Made for American Trade," or other legends of similar import or meaning, representing said lamps as wholly of American origin;

With effect, through said practices in concealing such legends of origin and in representing, as above set forth, that said flashlight lamps were wholly of domestic origin, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said lamps were products wholly of domestic origin, for which there is decided preference among members of purchasing public over those composed in whole or to some extent of parts made in Japan or other foreign country, and with consequence, as result of such erroneous and mistaken belief as to said domestic origin of such lamps, engendered as above set forth, that substantial portion of purchasing public was induced to and did buy its said products, and with effect further, through use of such practices, of placing in hands of unscrupulous or uninformed dealers means and instrumentality whereby such dealers had been and 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.

Mr. Clark Nichols for the Commission.

COMPLAINT

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

Trade Commission, having reason to believe that the Vulcan Lamp Works, 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, Vulcan Lamp Works, Inc., is a corporation organized under the laws of the State of New Jersey, with its office and principal place of business at 125 Jersey Street, Harrison, N. J. The respondent is now and has been for several years last past engaged in the business of purchasing small glass incandescent electric light bulbs and bases therefor, and assembling these into miniature incandescent lamps, automobile bulbs, flashlight bulbs, and other incandescent electric lamps, and offering for sale and selling such finished products to retail dealers for resale to the purchasing public.

Respondent causes its products, when sold, to be transported from its place of business in the State of New Jersey 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 products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business the respondent imports many of its bulbs from the country of Japan, which bulbs when received by respondent have imprinted on the neck thereof the words "Made in Japan" or "Japan." In the manufacture of the finished lamps the respondent places such bulbs into bases which are purchased by respondent from manufacturers in the United States and which bear thereon the legend "Made in U. S. A." As a result of such process the words "Made in Japan" or "Japan" are entirely concealed and there remains visible only the legend "Made in U. S. A." Such finished lamps are then sold by respondent to retail dealers without any marking thereon to indicate that the bulbs of such lamps, which constitute the basic part thereof, are of Japanese or foreign origin rather than domestic origin.

In packing and arranging such lamps for shipment to retail dealers and for display and resale by such dealers to the purchasing public, the respondent places such lamps in cartons and on cards bearing the legend "Made in U. S. A." or "American Made for American Trade," or other legends of similar import or meaning, all of which represent that such lamps are wholly of American manufacture.

PAR. 3. There is among the members of the purchasing public a decided preference for products which are manufactured in the United States over products manufactured in Japan or any other foreign country.

PAR. 4. The practices of the respondent in concealing the legends showing that such original bulbs were manufactured in Japan and in representing, by the means and in the manner aforesaid, that such finished lamps are wholly of domestic manufacture have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such lamps are wholly of domestic origin and manufacture rather than foreign origin and manufacture. As a result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public is induced to and does purchase respondent's products.

By the use of the practices herein set forth the respondent has also placed in the hands of unscrupulous or uninformed dealers a means and instrumentality whereby such dealers have been and are enabled to mislead and deceive members of the purchasing public.

PAR. 5. The 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 3, 1940, issued and subsequently served its complaint in this proceeding upon respondent Vulcan Lamp Works, 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, 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. After the filing of said substitute answer, 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, Vulcan Lamp Works, Inc., is a corporation organized under the laws of the State of New Jersey, with its office and principal place of business at 125 Jersey Street, Harrison, N. J. The respondent is now and has been for several years last past engaged in the business of manufacturing flashlight bulbs and other incandescent electric light bulbs and selling such bulbs to the retail trade. Respondent is also engaged in the business of importing glass bulbs from Japan and of assembling such bulbs, along with other parts, into flashlight lamps.

Respondent causes its products, when sold, to be transported from its place of business in the State of New Jersey 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 products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. When received by respondent, the glass bulbs imported from Japan, as aforesaid, have imprinted on the neck thereof the words "Made in Japan" or "Japan." In assembling the finished flashlight bulbs, the respondent places such glass bulbs into bases which are purchased by respondent from manufacturers in the United States and which bear thereon the legend "Made in U. S. A." As a result of such process the words "Made in Japan" or "Japan" are entirely concealed and there remains visible only the legend "Made in U. S. A." Such finished lamps are then sold by respondent to retail dealers without any marking thereon to indicate that the bulbs of such lamps, which constitute the basic part thereof, are of Japanese or foreign origin rather than domestic origin.

In packing and arranging such flashlight lamps for shipment to retail dealers and for display and resale by such dealers to the purchasing public, the respondent places such lamps in cartons and on cards bearing the legend "Made in U. S. A." or "American Made for American Trade," or other legends of similar import or meaning, all of which represent that such lamps are wholly of American origin.

PAR. 3. There is among the members of the purchasing public a decided preference for products which are wholly of American origin over products composed in whole or in part of parts manufactured in Japan or any other foreign country.

PAR. 4. The bulbs imported by respondent from Japan, as aforesaid, are used by respondent only in three kinds of flashlight lamps, which are designated by the trade name "Service" and by the numbers

13, 14, and 31. No other lamps sold by respondent contain any parts imported from foreign countries. The volume of business done by respondent in the flashlight lamps referred to above constitutes about 3 percent of respondent's total volume of business. The last shipment of said Japanese bulbs used by the respondent was received about October 1939.

PAR. 5. The practices of the respondent in concealing the legends showing that such original flashlight bulbs were manufactured in Japan and in representing, by the means and in the manner aforesaid, that such finished flashlight lamps are wholly of domestic origin have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such lamps are wholly of domestic origin. As a result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public is induced to and does purchase respondent's products.

By the use of the practices herein set forth the respondent has also placed in the hands of unscrupulous or uninformed dealers a means and instrumentality whereby such dealers have been and are enabled to mislead and deceive members of the purchasing public.

CONCLUSION

The 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Vulcan Lamp Works, 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 flashlight lamps or bulbs, or any other incandescent electric lamps, in commerce, as "commerce" is

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

1. Representing in any manner that flashlight lamps or other incandescent electric lamps, are made or manufactured in the United States, when in fact such lamps or the basic parts thereof are manufactured in countries other than the United States,

2. Representing, through failure to disclose that the basic parts of flashlight lamps or other incandescent electric lamps are manufactured in countries other than the United States, that such flashlight lamps or other incandescent electric lamps are wholly of American manufacture,

3. Using the words "Made in U. S. A." or "American Made for American Trade," or any other word or words of similar import or meaning, to designate, describe or refer to any flashlight bulbs or other incandescent electric light bulbs the basic parts of which are manufactured in any country other than 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

SCHOLL 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 4241. Complaint, Aug. 20, 1940—Decision, Dec. 2, 1940

Where a corporation engaged in manufacture, interstate sale and distribution of its "Dr. Scholl's Zino-Pads" and "Dr. Scholl's Kurotex Foot Plasters" for treatment of corns, bunions, and other foot ailments, in advertisements of its said products which it disseminated and caused to be disseminated through the mails, and in various other ways in commerce, through newspaper and periodical advertisements and by radio continuities, and circulars, leaflets, pamphlets, and other advertising literature, and otherwise, and which were intended and likely to induce purchase of such products—

(*a*) Represented that use of said pads stopped pain instantly and in 1 minute, and that corns and callouses could be lifted out after application thereof without use of surgery or other aids, and that they constituted a cure or remedy for said conditions and had healing properties, facts being said pads were not such a cure or remedy, any relief from pain afforded by their use would be gradual, and would not relieve pain as above claimed, and while, in some instances, through relief of pressure of shoes, it might be possible to peel off or remove layers of the corn, use thereof would not make it possible, without use of surgery, to lift out corns or callouses; and

(*b*) Represented that use of said foot plaster instantly relieved pain caused by corns, sore toes, callouses, bunions, and tender spots on the feet or toes caused by new or tight shoes, facts being such plasters would give only such degree of relief as would follow from the protection from outside pressure and friction and only that as long as they were employed or worn for protective purposes, and they would not instantly relieve pain caused by various conditions above set forth, as claimed therefor;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and of inducing portion of such public, because of said erroneous and mistaken belief, to purchase its said products or devices:

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 Scholl Manufactur-

ing 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. The respondent, Scholl Manufacturing Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business at 211 West Shiller Street in the city of Chicago, State of Illinois.

Respondent is now, and has been for several years last past, engaged in the manufacture, sale, and distribution of certain devices known as "Dr. Scholl's Zino-Pads" and "Dr. Scholl's Kurotex Foot Plasters," and designed for the treatment of corns, bunions, and other foot ailments. Respondent causes said devices, when sold, to be transported from its aforesaid place of business in the State of Illinois or from the State of origin of the shipment thereof to the purchasers thereof at their respective points of location in various States of the United States other than the State of origin of the shipment thereof and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said devices 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 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 newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

In relation to said device designated as Zino-Pads—

1. Pain stops instantly.
2. Pain stops the instant you apply Dr. Scholl's Zino-Pads.
3. Stops pain in one minute.
4. Corns, callouses soon lift out.
5. Ends corns.
6. —— healing — pads.
7. New miracle relief from corns, callouses, bunions, sore toes.

and in relation to said device designated Dr. Scholl's Kurotex Foot Plaster—

Instantly relieves corns, sore toes, callouses, bunions, tender spots on feet and toes caused by new or tight shoes.

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 said products, respondent represents that the use of said Dr. Scholl's Zino-Pads stops pain instantly and in 1 minute; that corns and callouses can be lifted out after the application of said Zino-Pads without the use of surgery or other aids; that the use of said Zino-Pads is a cure or remedy for corns, callouses, and bunions; that the said Zino-Pads have healing properties; that the use of said Zino-Pads abolishes shoe pressure and friction; and that the use of said Kurotex Foot Plaster instantly relieves the pain caused by corns, sore toes, callouses, bunions, and tender spots on the feet and toes caused by new or tight shoes.

PAR. 3. 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, said product or device known as "Dr. Scholl's Zino-Pads" is not a cure or remedy for corns, callouses, or bunions. Said product will not relieve pain instantly or in 1 minute, any relief from pain afforded by the use of said product being gradual. The use of said product will not make it possible to lift out corns or callouses without the use of surgery, although in some cases, as a result of relieving the pressure of shoes, it may be possible to peel off or remove layers of the corn. Said Zino-Pads have no healing qualities. The use of respondent's product "Kurotex Foot Plaster" does not instantly relieve the pain caused by corns, sore toes, callouses, bunions, or tender spots on the feet caused by new or tight shoes, but would give only such degree of relief as would follow from the protection from outside pressure and friction, and then only as long as these pads were employed or worn for protective purposes.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements and advertisements disseminated as aforesaid, has the capacity and tendency to and does mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's products or devices.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 20, 1940, issued and served its complaint in this proceeding upon respondent, Scholl Manufacturing Co., Inc., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

On September 14, 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 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, Scholl Manufacturing Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business at 211 West Shiller Street, in the city of Chicago, State of Illinois.

Respondent is now, and has been for several years last past, engaged in the manufacture, sale, and distribution of certain devices known as "Dr. Scholl's Zino-Pads" and "Dr. Scholl's Kurotex Foot Plasters," and designed for the treatment of corns, bunions, and other foot ailments.

Respondent causes said devices, when sold, to be transported from its aforesaid place of business in the State of Illinois or from the State of origin of the shipment thereof to the purchasers thereof at their respective points of location in various States of the United States other than the State of origin of the shipment and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said devices 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 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 United States mails, by advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

In relation to said device designated as Zino-Pads:

1. Pain stops instantly.
2. Pain stops the instant you apply Dr. Scholl's Zino-Pads.
3. Stops pain in one minute.
4. Corns, callouses soon lift out.
5. Ends corns.
6. — — healing — — pads.
7. New miracle relief from corns, callouses, bunions, sore toes.

and in relation to said device designated Dr. Scholl's Kurotex Foot Plaster:

Instantly relieves corns, sore toes, callouses, bunions, tender spots on feet and toes caused by new or tight shoes.

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 said products, respondent represents that the use of said Dr. Scholl's Zino-Pads stops pain instantly and in 1 minute; that corns and callouses can be lifted out after the application of said Zino-Pads without the use of surgery or other aids; that the use of said Zino-Pads is a cure or remedy for corns, callouses, and bunions; that the said Zino-Pads have healing properties; and that the use of said Kurotex Foot Plaster instantly relieves the pain caused by corns, sore toes, callouses, bunions, and tender spots on the feet and toes caused by new or tight shoes.

PAR. 3. 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, said product or device known as "Dr. Scholl's Zino-Pads" is not a cure or remedy for corns, callouses, or bunions. Said product will not relieve pain instantly or in 1 minute, any relief from pain afforded by the use of said product being gradual. The use of said product will not make it possible to lift out corns or callouses without the use of surgery, although in some cases, as a result of relieving the pressure of shoes, it may be possible to peel off or remove layers of the corn. Said Zino-Pads have no healing qualities. The use of respondent's product "Kurotex Foot Plaster" does not instantly relieve the pain caused by corns, sore toes, callouses, bunions, or tender spots on the feet caused by new or tight shoes, but would give only such degree of relief as would follow from the protection from outside pressure and friction, and then only as long as these pads were employed or worn for protective purposes.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements and advertisements disseminated as aforesaid, has the capacity and tendency to and does mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's products or devices.

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 respondent, Scholl Manufacturing 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 its products, "Dr. Scholl's Zino-Pads" and "Dr. Scholl's Kurotex Foot Plasters," whether sold under the same name 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 advertisements represent, directly or through inference, that the use of said "Dr. Scholl's Zino-Pads" stops pain instantly, or in 1 minute; that corns or callouses can be lifted out after the application of said "Dr. Scholl's Zino-Pads" without the use of surgery or other aids; that the use of said "Dr. Scholl's Zino-Pads" is a cure or remedy for corns, callouses, or bunions; that said "Dr. Scholl's Zino-Pads" have healing properties; or that the use of said "Kurotex Foot Plasters" instantly relieves the pain caused by corns, sore toes, callouses, bunions, or tender spots on the feet caused by new or tight shoes, or gives any degree of relief for such conditions in excess of that which follows from the protection from outside pressure and friction, or gives any relief from such conditions except during the time that said "Kurotex Foot Plasters" are worn.

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 "Dr. Scholl's Kurotex Foot Plasters," or of said "Dr. Scholl's Zino-Pads," 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

SAMUEL R. ISRAEL AND AL GOLDSTEIN TRADING AS HOUSE OF ROYALSUN

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

Docket 3849. Complaint, July 14, 1939—Decision, Dec. 3, 1940

Where three partners engaged under trade name in interstate sale and distribution of various grades and types of textiles, fabrics, and knitting yarns, in substantial competition with others engaged in sale and distribution of various grades and types of such fabrics and yarns in commerce as aforesaid, in pursuance of a practice of representing falsely the constituent fiber or material of which the various products sold and distributed by them were made, and which included textile products composed of various combinations of rayon, wool, and cotton—

(*a*) Represented as composed of silk certain products through use of brand names such as "New Pigment Crepe" on labels attached to particular one concerned, notwithstanding fact said product thus designated was not, as known to public from said word and designation, without modifying words, pure silk, but was in fact made from various combinations of wool, cotton, and rayon;

(*b*) Represented as composed of wool certain products through use of brand names such as "Zephyr Tweed," "Oriental Tweed," "Rainbow Tweed," "Tropical Tweed," and "Scotch Tweed" on labels attached to various textile products concerned, notwithstanding facts such products were not fabrics composed entirely of wool as favorably known to substantial portion of purchasing public from words "tweed" and "worsted," but were otherwise composed of various combinations of rayon, wool, or cotton as hereinabove set forth;

(*c*) Represented as composed of wool obtained from hair of the "Cashmere" goat certain products through use of brand names such as "Cashmere Sport Yarn" on labels attached to particular product, notwithstanding fact fabrics in question were not composed of such wool as understood by substantial portion of purchasing public from use of word "Cashmere" in marking of product, but were otherwise composed as hereinabove described;

(*d*) Represented as composed of wool certain of their said products through the use of such brand names as "Lustre Wool" on labels attached to particular product concerned, notwithstanding fact said products were not wool but were otherwise composed as hereinabove set forth; and

(*e*) Represented falsely constituent fiber or material of which certain of their said products were composed through failure to reveal in such products presence therein of rayon, chemical fiber or fabric which, when manufactured to simulate appearance and feel of either silk or wool and not properly labeled as rayon, is by purchasing public, practically indistinguishable from silk or wool as case may be; and

Where said partners engaged as aforesaid, in statements, descriptive, or purportedly descriptive, of their said business—

(*f*) Represented that they maintained a separate unit in their organization for blocking and cleaning garments and that such unit was operated by experts and that their plant was equipped to specialize in such work and that such branch of the business was on a nonprofit basis and operated solely as a service for their customers, facts being cleaning and blocking plant advertised by them through various means was operated for very short time and was owned by a party with whom they were not connected, and located across the street from their place of business, and they merely supervised cleaning and blocking there performed, and continued to advertise operation of such plant in connection with their business long after discontinuance of plant in question;

(*g*) Represented that they had in their employ one of the foremost authorities in the East on mail order instruction and fashion designs and that such expert was in charge of styles and instructions at their place of business and that his services were available to their customers, the facts being said individual represented as aforesaid as one of the foremost experts in the East on mail order instructions and fashion designs in the use of knitting yarns was not such an expert but a person of limited experience, and ceased to be in their employ long prior to their discontinuance of the advertisement of such service; and

(*h*) Represented that on each dollar spent in the purchase of their products purchaser would save 33 cents and that their prices were lower than those obtained by competitors for inferior yarns and that their yarns lasted twice as long as any other yarn, facts being purchasers did not make such a saving on every dollar spent in buying their products as compared with yarns offered by competitors, their products in a number of instances sold for higher prices than products of similar quality offered by competitors, and their products represented as lasting twice as long as other yarns did not possess any such quality of longevity;

With result that use of such acts and practices by them had and continued to have tendency and capacity to mislead and deceive substantial portion of purchasing public, members of which are forced to rely upon the advertisements and representations of manufacturers and dealers in textile, fabrics and knitting yarns, and upon the statements of their sales representatives in the purchase of such products, into the erroneous belief that all of said representations were true, and that they had truthfully represented the constituent fiber and material of which their textiles, fabrics and knitting yarn products were made, and that they furnished special services to their customers and sold their products at prices which resulted in considerable saving to purchasers, and with consequence, by reason of such erroneous beliefs thus engendered, that a number of consuming public purchased a substantial volume of their products, and trade was thereby diverted unfairly to them from their competitors engaged also in sale and distribution in commerce, as aforesaid, of various types and grades of textiles, fabrics, and knitting yarns and who do not misrepresent the type, grade, quality, price, or service to their customers:

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* and *Mr. Robert S. Hall*, trial examiners.

Mr. James L. Fort and *Mr. Robert Mathis, Jr.*, for the Commission.

Mr. Samuel R. Israel, 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 Samuel R. Israel. and Al Goldstein, individually and as copartners trading as the House of Royalsun, 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 R. Israel and Al Goldstein are copartners, trading as House of Royalsun, with their principal place of business at 25 Essex Street, in the city of New York, State of New York.

Par. 2. Respondents are now, and have been for a year or more last past, engaged in the business of selling and distributing various grades and types of textile fabrics and knitting yarns. Respondents sell their products to members of the purchasing public situated in various States of the United States and in the District of Columbia and cause said products when sold by them to be transported from their place of business in the State of New York to the purchasers thereof at their respective points of location in the various States of the United States other than the State of New York, and 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. Respondents are engaged in substantial competition in commerce between and among the various States of the United States and in the District of Columbia, with other partnerships, and with individuals, corporations, and firms engaged in the business of selling and distributing various grades and types of textile fabrics and knitting yarns in commerce between the various States of the United States and in the District of Columbia.

Par. 4. In the course and conduct of their said business, respondents have engaged in the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by them are made by means of false representations on labels attached to their products and in various catalogs, and other

advertising matter, and by failure to disclose the rayon content of certain of their products. Respondents also have falsely represented that in purchasing their products purchasers received certain discounts or savings. Respondents have also falsely represented that they maintain a separate unit in their organization for blocking and cleaning garments; that said unit is operated by experts; that respondents' plant is equipped to specialize in such work; that this branch of the business is on a nonprofit basis, and is operated solely as a service for their customers. Respondents have also falsely represented that they had in their employ one of the foremost authorities in the East on mail-order instructions and fashion designs who was in charge of styles and instructions at their place of business, and whose services were available to respondents' customers.

In furtherance of the foregoing practices and for the purpose of inducing the purchase of the said products, respondents have caused false statements and representations purporting to be descriptive of such products, their respective constituent fiber or material; false statements as to alleged savings or discounts; false statements as to the operation by respondents of a blocking and cleaning unit, and false statements as to the presence in their employ of an expert in charge of styles and instructions, to be inserted in catalogs, price lists, and advertisements appearing in magazines, newspapers, and other publications, distributed among prospective purchasers of said products situated in various States of the United States and in the District of Columbia.

PAR. 5. Among and typical of the acts and practices above described, respondents represented by labels, catalogs, and other advertising material distributed to their customers certain of their products as being "New Pigment Crepe," "Fine Silk and Wool," "4-Ply Silk and Wool," "Pure Wool," "Worsted," "Tweed," "Cashmere," and other and similar terms, when in fact said products were not made of the fibers indicated by the use of these terms, but were made from fibers other than those indicated by the use of the aforesaid terms.

PAR. 6. Other and typical acts and practices engaged in by the respondents in falsely representing their products are representations contained in their catalogs that "on every dollar purchased you save 33¢"; the representations contained in advertisements in periodicals that purchasers obtain a saving "up to 50%," and the representations containing an alleged guarantee that their "prices are even lower than those obtained for inferior yarns." The facts are that no such savings are effected and their prices are on a parity with those of other similar dealers.

PAR. 7. A further typical act and practice on the part of respondents is the representation contained in their advertising that respondents operate a blocking and cleaning unit for the use of their customers, which they allege they operate on a nonprofit basis, when in truth and in fact such cleaning and blocking as respondents have occasion to do is done by a regular cleaning establishment not operated by respondents.

PAR. 8. Typical also of said acts and practices respondents represent their said products as being of a finer grade, higher quality or of a different fiber than is actually the fact by the use of words and phrases indicative to the purchasing public of certain fiber, grade, or quality. An example of this practice is the respondents' use of the word "Cashmere" in advertising material to designate and describe certain of their products which do not contain the hair of the Cashmere goat but instead are composed of other fibers.

Another example is the representation in their catalog distributed as aforesaid that their yarn "will last twice as long as any other yarn." The yarns distributed by them possess no such quality of longevity.

PAR. 9. A further typical act and practice on the part of respondents is the use of words which are associated in the minds of the purchasing and consuming public as being descriptive of wool exclusively to designate and describe certain yarn products as aforesaid which are composed in part of wool and in part of other materials. As an example of this practice, the respondents use the term "Oriental Tweed" in advertising matter and in catalogs distributed as aforesaid to designate the yarn products composed of rayon and wool.

PAR. 10. Further typical of the acts and practices on the part of respondents is the representation in their catalogs that one Helen Field is "in charge of styles and instructions at the House of Royalsun" offering free knitting service to customers, and further representation that such individual is "one of the foremost authorities in the East on mail-order instructions and fashion designs," when in truth and in fact respondents had no experts who had the qualifications claimed.

PAR. 11. 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.

The unqualified word "silk" has, in the minds of the purchasing and consuming public, the definite and specific meaning of unweighted

silk or silk which has not been subjected to the process of a metallic bath.

The word "cashmere" has long been applied to a particular type of wool fiber that is made from the hair of the Cashmere goat, and which product has for a long time been known well and favorably to the purchasing public. The word "cashmere" when used in connection with the designation and description of yarns or other products having the general appearance of wool fibers, is considered by members of the purchasing public as being a descriptive designation of a cashmere wool product composed entirely of the hair of the Cashmere goat.

The word "crepe" is a word long and favorably known to a substantial portion of the purchasing public as descriptive of a certain type of fabric made of unweighted silk.

The words "worsted" and "tweed" are words long and favorably known to a substantial portion of the purchasing and consuming public as descriptive of certain kinds of fabrics composed entirely of wool.

The word "rayon" is the name of a chemical fiber or fabric which simulates "silk" in that it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk.

PAR. 12. The use by respondents of the aforesaid acts and practices has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that the respondents have truthfully represented the constituent fiber and material of which their products are made; that respondents furnish special services to their customers, and sell their products at prices which result in a considerable saving to their purchasers. On account of these erroneous beliefs a number of the consuming and purchasing public purchase a substantial volume of respondents' products with the result that trade has been diverted unfairly to the respondents from their competitors who are also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of various types and grades of textile yarns and knitting yarns. 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. 13. 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 competi-

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

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 14th day of July 1939, issued and subsequently served its complaint in this proceeding upon the respondents, Samuel R. Israel, and Al Goldstein, individually and as copartners trading as the House of Royalsun, 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 the complaint, and filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by James L. Fort and Robert Mathis, Jr., attorneys for the Commission, and in opposition to the allegations of said complaint by Samuel R. Israel, one of the respondents, for the respondents, before Arthur F. Thomas and Robert S. Hall, examiners of the Commission, theretofore duly designated by it, and said evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter, and being now fully advised in the premises, finds this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondents, Samuel R. Israel and Al Goldstein, individuals, are copartners, trading as House of Royalsun, with their principal place of business at 25 Essex Street, in the city of New York, State of New York.

Par. 2. Respondents are now, and have been for a year or more last past, engaged in the business of selling and distributing various grades and types of textile fabrics, and knitting yarns. Respondents sell their products to members of the purchasing public situated in various States of the United States, and in the District of Columbia, and cause said products, when sold by them, to be transported from their 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. Respondents maintain, and at all times herein mentioned, have maintained a course of trade in said products in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. Respondents are engaged in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with other partnerships, and with individuals, corporations, and firms engaged in the business of selling and distributing various grades and types of textile fabrics and knitting yarns in commerce between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, respondents have engaged in the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by them are made. Such misrepresentation has been accomplished by the use of brand names such as "New Pigment Crepe," "Cashmere Sport Yarn," "Zephyr Tweed," "Oriental Tweed," "Lustre Wool," "Rainbow Tweed," "Tropical Tweed," "Scotch Tweed," and "Royalsun Yarns" to describe and designate textile products composed of various combinations of rayon, wool, and cotton and by respondents' failure to disclose the presence of rayon in certain of such products. The brand names set-out above appeared on labels attached to the individual items of respondent's various textile products.

Respondents have also represented that they maintained a separate unit in their organization for blocking and cleaning garments; that such unit was operated by experts; that respondents' plant was equipped to specialize in such work; and that this branch of the business was on a non-profit basis and operated solely as a service for their customers. Some of such representations were in the following language:

> Blocking and Cleaning—We maintain a separate unit in our organization for this type of work, and it is handled by experts.
>
> Our plant is designed to specialize in such work with knitted garments. This phase of our work is solely as a special service to our trade.

Respondents also represented that they had in their employ one of the foremost authorities in the East on mail order instructions and fashion designs, and that such expert was in charge of styles and instructions at their place of business, and whose services were available to respondents' customers.

Respondents also represent that on each dollar spent in the purchase of their products the purchaser thereof would save 33 cents; that

respondents' prices are lower than those obtained by competitors for inferior yarns; and that respondents' yarns last twice as long as any other yarn. Among and typical of representations of this character are the following:

Yarns save up to 50%.

On every dollar purchase you save 33 cents.

Guaranteed that our prices are even lower than those obtained for inferior yarns.

Guaranteed that our yarn will last twice as long as any other yarn.

PAR. 5. The representations as set out herein are false and misleading to the purchasing public. The word "crepe" without modifying words is known to the purchasing public as a term descriptive of pure silk. A substantial portion of the purchasing public believes respondents' product represented as "New Pigment Crepe" is a product composed entirely of silk. Respondents' products designated as "New Pigment Crepe" and represented to be made of silk are not composed of silk but are in fact made from various combinations of wool, cotton, and rayon. The words "tweed" and "worsted" are words which have been and are favorably known to a substantial portion of the purchasing public as descriptive of certain kinds of fabrics composed entirely of wool; a substantial portion of the purchasing public believes that a product marked "cashmere" is composed of a kind of wool obtained from the hair of the "cashmere" goat.

The word "rayon" is the name of a chemical fiber or fabric which may be manufactured to simulate the appearance and feel of either silk or wool and when so manufactured and not properly labeled as rayon is practically indistinguishable by the purchasing public from silk or wool, as the case may be. The members of the purchasing public are forced to rely upon the advertisements and representations of manufacturers and dealers in textile fabrics and knitting yarns and upon the statements of their sales representatives in the purchase of such products.

The cleaning and blocking plant which respondents advertised through various means was operated for a very short time, the equipment used being owned by another party not connected with respondent and being located directly across the street from respondents' place of business, the respondents merely supervising the cleaning and blocking which was performed there. However, respondents continued to advertise its operation in connection with their business for a long period of time after said plant had been discontinued. Respondents' products, which were represented to last twice as long as other yarns, do not possess any such quality of longevity.

Respondents' employee, represented as one of the foremost experts in the East on mail order instruction and fashion designs in the use

of knitting yarns, was not such an expert but a person of limited experience and ceased to be in the employ of the respondents long before respondents discontinued the advertisement of such service. Purchasers did not, and do not, save 33 cents on every dollar spent in purchasing respondents' product as compared with yarns offered for sale by competitors. In a number of instances respondents' product in fact sold for higher prices than products of similar quality offered by competitors.

PAR. 6. The use by respondents of the aforesaid acts and practices has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that the respondents have truthfully represented the constituent fiber and material of which their textile fabrics and knitting yarn products are made, that respondents furnish special services to their customers, and sell their products at prices which result in a considerable saving to purchasers. On account of these erroneous beliefs engendered as above set forth, a number of the consuming public purchases a substantial volume of respondents' products with the result that trade has been diverted unfairly to the respondents from their competitors, who are also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of various types and grades of textile fabrics and knitting yarns, and who do not misrepresent the type, grade, quality, price, or service to their customers.

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, testimony and other evidence taken before Robert S. Hall and Arthur F. Thomas, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the allegations of the complaint (respondents not having filed brief and oral argument not having been requested), and the Commission having made its findings as to the

facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Samuel R. Israel and Al Goldstein, individually and trading as House of Royalsun, 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 textile fabrics and knitting yarns and other like articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner or by any means that respondents' products are composed of fibers or materials other than those of which such products are actually composed.

2. Using the unqualified words "tweed," "worsted," or "wool," or any other descriptive terms of similar import or meaning or otherwise indicative of wool, to describe, designate, or in any way refer to any product which is not composed entirely of wool: *Provided, however*, That in the case of a fabric or product composed in part of wool and in part of other materials said words or other descriptive terms may be used to truthfully designate or describe the wool content when immediately accompanied by a word or words in letters of at least equal size and conspicuousness accurately describing or designating each constituent fiber or material thereof in the order of its predominance by weight beginning with the largest single constituent.

3. Representing in any manner or by any means that the quality, grade, material, or character of respondents' products are superior to or different from the actual quality, grade, material, or character of such products.

4. Using the unqualified word "cashmere" or any other descriptive word of similar import or meaning or of similar spelling or phonetic sound to describe, designate or in any way refer to any product which is not composed entirely of the hair of the Cashmere goat: *Provided, however*, That in the case of a fabric or product composed in part of Cashmere wool and in part of other material said words or other descriptive terms may be used to truthfully designate or describe the Cashmere wool content when immediately accompanied by a word or words in letters of at least equal size and conspicuousness accurately describing or designating each constituent fiber or material thereof in the order of its predominance by weight beginning with the largest single constituent.

5. Using the unqualified term "crepe" or any other descriptive term of similar import or meaning indicative of silk to describe, designate, or in any manner refer to any fabric or product which is not composed

wholly of silk, the product of the cocoon of the silk worm: *Provided, however*, That when said word or descriptive term is used truthfully to designate or describe the type of weave, construction or finish, such word shall be qualified by using in immediate connection and conjunction therewith, in letters of at least equal size and conspicuousness, a word or words clearly and accurately naming or describing the fibers or materials from which said products are made.

6. Using the unqualified term "silk" or any other term or terms of similar import or meaning indicative of silk to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silk worm: *Provided*, That in the case of a fabric or product composed in part of silk and in part of materials other than silk, such term or similar terms may be used as descriptive of the silk content when immediately accompanied by a word or words accurately describing and designating each constituent fiber or material thereof in the order of its predominance by weight, beginning with the largest single constituent.

7. Advertising, offering for sale, or selling fabrics, garments, knitting yarns, or other products composed in whole or in part of rayon without clearly disclosing the fact that such fabrics or products are composed of rayon, and when such fabrics or products are composed in part of rayon and in part of other fibers or materials such fibers or materials, including the rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

8. Representing that the respondents have in their employ an expert on fashion and design in knitting yarns, when respondents do not in fact have such person in their employ.

9. Representing that respondents operate a blocking and cleaning plant in connection with their business.

10. Representing that any savings can be effected by the purchase of respondents' products in excess of such savings as actually can be so realized.

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

It is further ordered, That no provision contained in this order shall be construed as authorizing or permitting, after July 14, 1941, the labeling of any wool product in any manner other than in strict conformity with the provisions of the Wood Products Labeling Act of 1939.

IN THE MATTER OF

JACOB L. GOLDMAN, ALIAS J. L. COLEMAN, TRADING AS ATLAS HEALTH APPLIANCE COMPANY

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

Docket 4291. Complaint, Aug. 29, 1940—Decision, Dec. 4, 1940

Where an individual engaged in interstate sale and distribution of device or apparatus designated Atlas Short Wave Diathermy, in advertisements of said device which he disseminated and caused to be disseminated through the mails and by various other means in commerce, and by advertisements in newspapers, radio continuities, circulars, leaflets, pamphlets, and other advertising literature, and otherwise, and which were intended and likely to induce purchase of his said product —

(*a*) Represented that said device, when used by the unskilled lay public in the treatment of self-diagnosed diseases or ailments, and by individual self-application in the home, constituted a scientific, safe, harmless, and effective means and method for the cure and effective treatment of numerous diseases and ailments having to do, as set forth by him, with head, skin, throat, stomach area, chest, and male and female disorders, and including also high blood pressure, arthritis, neuritis, and various other ailments and conditions, and, expressly and by implication, that he was trained and experienced in physical therapy and in the technique of diagnosing and treating pathological conditions by application of short-wave diathermy;

Facts being he was not thus trained and experienced, and such device would not accomplish results claimed therefor by him, and was not a scientific, safe, harmless, or effective means and method for use by the unskilled lay public in the cure or treatment of self-diagnosed diseases and ailments, as set forth by him, but such self-application by layman, by reason of technical inexperience, might result in severe electric burn through improperly adjusted electrode, and might cause serious injury to health, thus used in treatment of self-diagnosed diseases and ailments, and might, among various other results, lead to peritonitis and blood poisoning in various conditions of acute inflammation, to serious or fatal hemorrhage when applied in any conditions where there is a tendency thereto or in which congestion would aggravate existing trouble, to abortion when applied by layman during pregnancy, and in stimulating growth of cancer cells and metastasis or in spreading the trouble to other tissues when applied to areas which might be affected by malignant tumors, and in tissue destruction and severe burns where sense of heat in said areas of the skin might have been lost due to injury or impairment of nerves involved; and

(*b*) Failed to reveal in said advertisements disseminated by him as aforesaid, that use of said device 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 of inducing portion of said public, because of such erroneous and mistaken belief, to purchase his 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. 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 Jacob L. Goldman, alias J. L. Coleman, an individual, trading as Atlas Health Appliance 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, Jacob L. Goldman, alias J. L. Coleman, is an individual trading as Atlas Health Appliance Co., with his office and principal place of business at 2430 West Sixth Street, Los Angeles, Calif., 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 device or apparatus designated Atlas Short Wave Diathermy.

In the course and conduct of his business, the respondent causes said device when sold, to be transported from his place of business in the State of California 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 device, 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 device 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 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, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

The Atlas Short Wave Diathermy enables you to enjoy its many benefits in your own home.

Simplicity of operation is made possible for self-treatment without an attendant.

Self-treatments with the Atlas, whether for acute or chronic ailments, are very easily administered.

Although for some time only professionally available, Short Wave Diathermy may now be used by yourself in the privacy of your own home.

The various ailments which readily respond to this pleasant yet effective method of treatment include the following:

HEAD	SKIN	THROAT
sinus	boils	asthma
neuralgia	abscesses	laryngitis
hay fever	carbuncles	tonsillitis
headache	infections	irritations
colds		

STOMACH AREA	CHEST	MALE DISORDERS
gastritis	bronchitis	prostate
colonic disorders	pneumonia	inflammation of bladder
constipation	colds	
pleurisy		
lumbago		FEMALE DISORDERS
kidney		menstrual pains
liver		pelvic inflammation

also

High Blood Pressure	Muscular Ailments
Arthritis	Insomnia
Neuritis	Indigestion
Inflamed Joints	Anemia
Sprains	Impetigo

and other ailments

Inflammation in various parts of the body known to us by many different names, causes untold suffering. In this field, Short Wave Diathermy is most beneficial.

Marked success has been met with in treating pelvic conditions and relieving menstrual pains.

The use of Atlas Short Wave Diathermy is always safe, harmless and health improving.

For interesting clinical reports, be sure to check your ailment and mail, or state ailment when writing.

Arthritis	Boils	Colonic Disorders
Asthma	Neuritis	Chronic Coughs
Sinusitis	Hi-Blood pres.	Pleurisy
Kidneys	Bladder Trouble	Rheumatism
Lumbago	Colds	Headaches
Prostate	Female Trouble	

Atlas Short Wave Diathermy accords its users amazing results.

Hardly a day passes that we're not asked whether our device is good for this disease or such a condition and which, after investigation, we have to report in the negative. If it is in the positive we do not hesitate to state our findings just as surely as we do not believe in hiding our light under a bushel.

Our technician will gladly give you this test when you call us for a home demonstration.

The soothing penetrating heat of Short Wave Diathermy creates—in effect—a mild, artificial fever in the affected part, and definitely aids in killing bacteria.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that his device, designated as Atlas Short Wave Diathermy, when used by the unskilled lay public in the treatment of self-diagnosed diseases or ailments of the human body by individual self-application in the home, is a scientific, safe, harmless, and effective means and method for the cure and effective treatment of the diseases and ailments and other ailments of the human body set forth in detail in paragraph 3; that it definitely aids in killing bacteria and that its use will have no ill effects upon the human body.

Furthermore, said respondent represents expressly and by implication that he is trained and experienced in physical therapy and in the technique of diagnosing and treating pathological conditions of the human body by the application of short-wave diathermy.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. The said device will not accomplish the results claimed by the respondent and is not a scientific, safe, harmless, or effective means and method to be used by the unskilled lay public in the cure or treatment of self-diagnosed diseases and ailments of the human body set forth in detail in paragraph 3 hereof by individual self-application in the home.

Furthermore, said respondent is not trained and experienced in physical therapy or in the technique of diagnosing and treating pathological conditions of the human body by the application of short-wave diathermy.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertise-

ments in the manner above set forth, in that said advertisements so disseminated, fail to reveal 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 serious and irreparable injury to health.

PAR. 7. In truth and in fact, the device sold and distributed by the respondent as aforesaid, designated as Atlas Short Wave Diathermy, is composed principally of a short-wave generator housed in a portable cabinet. The current is a modified Coulpitt Circuit, using a transformer of 1,150 volts (half-wave), two Taylor T-55 tubes, plus the regular chokes for proper control. The output is on approximately a 16 meter wave length. The power output is 125 to 150 watts calibrated on a photoelectric watt meter. Under ordinary lamp load, it may be considered as 160 to 175 watts output. No cable is used with this apparatus as it is not adapted for this modality. Power is transmitted by two insulated condenser pads 6 by 8 inches, or by a small 4 by 7 inch pad used in connection with one of the larger pads.

The self-application of this device may cause serious injury to health when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body.

By reason of technical inexperience on the part of laymen, an improperly adjusted electrode may produce a spark gap between the electrode and the skin causing severe electric burn.

The use of said device, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, by the unskilled lay public, may result in serious or irreparable injury to health.

Specifically such use, as aforesaid, may result in: Peritonitis and blood poisoning, in conditions of acute inflammation, such as boils, carbuncles, acute arthritis due to infection, acute pelvic infection in the female, acute cystitis, acute sinus infections, tonsillitis, lung abscess, appendicitis, and acute prostatitis; serious or fatal hemorrhage when applied in any conditions 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 diseases; 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 and 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.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading advertisements with respect to his device, disseminated as aforesaid, had had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said device.

PAR. 9. 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 the 29th day of August 1940, issued and thereafter served its complaint in this proceeding upon respondent, Jacob L. Goldman, alias J. L. Coleman, an individual, trading as Atlas Health Appliance Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Subsequently, 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, Jacob L. Goldman, alias J. L. Coleman, is an individual trading as Atlas Health Appliance Co., with his office and principal place of business at 2430 West Sixth Street, Los Angeles, Calif., 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 device or apparatus designated Atlas Short Wave Diathermy.

In the course and conduct of his business, the respondent causes said device, when sold, to be transported from his place of business in the State of California 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 device, 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 device 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 his product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his 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, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

The Atlas Short Wave Diathermy enables you to enjoy its many benefits in your own home.

Simplicity of operation is made possible for self-treatment without an attendant.

Self-treatments with the Atlas, whether for acute or chronic ailments, are very easily administered.

Although for some time only professionally available, Short Wave Diathermy may now be used by yourself in the privacy of your own home.

The various ailments which readily respond to this pleasant yet effective method of treatment include the following:

HEAD	SKIN	THROAT
sinus	boils	asthma
neuralgia	abscesses	laryngitis
hay fever	carbuncles	tonsillitis
headache	infections	irritations
colds		

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STOMACH AREA	CHEST	MALE DISORDERS
gastritis	bronchitis	prostate
colonic disorders	pneumonia	inflammation of bladder
constipation	colds	
pleurisy		
lumbago		FEMALE DISORDERS
kidney		menstrual pains
liver		pelvic inflammation

also

High blood pressure	Muscular ailments
Arthritis	Insomnia
Neuritis	Indigestion
Inflamed joints	Anemia
Sprains	Impetigo

and other ailments.

Inflammation in various parts of the body known to us by many different names, causes untold suffering. In this field, Short Wave Diathermy is most beneficial.

Marked success has been met with in treating pelvic conditions and relieving menstrual pains.

The use of Atlas Short Wave Diathermy is always safe, harmless and health improving.

For interesting clinical reports, be sure to check your ailment and mail, or state ailment when writing.

Arthritis	Neuritis	Colonic Disorders
Asthma	Boils	Chronic Cough
Sinusitis	Hi-blood pres.	Pleurisy
Kidneys	Bladder Trouble	Rheumatism
Lumbago	Colds	Headaches
Prostate	Female Trouble	

Atlas Short Wave Diathermy accords its users amazing results.

Hardly a day passes that we're not asked whether our device is good for this disease or such a condition and which, after investigation, we have to report in the negative. If it is in the positive we do not hesitate to state our findings just as surely as we do not believe in hiding our light under a bushel.

Our technician will gladly give you this test when you call us for a home demonstration.

The soothing, penetrating heat of Short Wave Diathermy creates—in effect—a mild, artificial fever in the affected part, and definitely aids in killing bacteria.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that his device, designated as Atlas Short Wave Diathermy, when used by the unskilled lay public in the treatment of self-diagnosed diseases or ailments of the human body by individual self-application in the home, is a scientific, safe, harmless, and effective means and method for the cure and effective

treatment of the diseases and ailments and other ailments of the human body set forth in detail in paragraph 3; that it definitely aids in killing bacteria and that its use will have no ill effects upon the human body.

Furthermore, said respondent represents expressly and by implication that he is trained and experienced in physical therapy and in the technique of diagnosing and treating pathological conditions of the human body by the application of short wave diathermy.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. The device will not accomplish the results claimed by the respondent and is not a scientific, safe, harmless, or effective means and method to be used by the unskilled lay public in the cure or treatment of self-diagnosed diseases and ailments of the human body set forth in detail in paragraph 3 hereof by individual self-application in the home.

Furthermore, respondent is not trained and experienced in physical therapy or in the technique of diagnosing and treating pathological conditions of the human body by the application of short wave diathermy.

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 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 serious and irreparable injury to health.

PAR. 7. In truth and in fact, the device sold and distributed by the respondent as aforesaid, designated as Atlas Short Wave Diathermy, is composed principally of a short-wave generator housed in a portable cabinet. The current is a modified Coulpitt Circuit, using a transformer of 1,150 volts (half-wave), two Taylor T-55 tubes, plus the regular chokes for proper control. The output is on approximately a 16 meter wave length. The power output is 125 to 150 watts calibrated on a photoelectric watt meter. Under ordinary lamp load, it may be considered as 160 to 175 watts output. No cable is used with this apparatus as it is not adapted for this modality. Power is transmitted by two insulated condenser pads 6 by 8 inches, or by a small 4 by 7 inch pad used in connection with one of the larger pads.

The self-application of this device may cause serious injury to health when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body.

By reason of technical inexperience on the part of laymen, an improperly adjusted electrode may produce a spark gap between the electrode and the skin, causing severe electric burn.

The use of said device, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, by the unskilled lay public may result in serious or irreparable injury to health.

Specifically such use, as aforesaid, may result in: Peritonitis and blood poisoning, in conditions of acute inflammation, such as boils, carbuncles, acute arthritis due to infection, acute pelvic infection in the female, acute cystitis, acute sinus infections, tonsillitis, lung abscess, appendicitis, and acute prostatitis; serious or fatal hemorrhage when applied in any conditions 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 diseases; abortion, followed by subinvolution, putrefaction of 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, and 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.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading advertisements with respect to his device, 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 device.

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 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, Jacob L. Goldman, alias J. L. Coleman, an individual, trading as Atlas Health Appliance 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 device designated as "Atlas Short Wave Diathermy" or any other device of substantially similar construction, whether sold under the same 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 (*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 respondent is trained or experienced in physical therapy or in the technique of diagnosing or treating pathological conditions; that respondent's device when used by the unskilled lay public constitutes a scientific, safe, harmless or effective means or method for the treatment of:

> Sinus, sinusitis, neuralgia, hay fever, headache, colds, boils, abscesses, carbuncles, infections, asthma, laryngitis, tonsillitis, throat irritations, chronic coughs, gastritis, colonic disorders, constipation, pleurisy, lumbago, kidney disorders, liver disorders, bronchitis, pneumonia, prostate disorders, inflammation of bladder, menstrual pains, pelvic inflammation, high blood pressure, arthritis, neuritis, inflamed joints, sprains, rheumatism, muscular ailments, insomnia, indigestion, anemia, or impetigo, or that said device aids in killing bacteria;

or which advertisement fails to reveal that the unsupervised use of said 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 by 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 said 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 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

BELL & 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 2859. Complaint, June 30, 1936—Decision, Dec. 10, 1940

Where a corporation engaged in manufacture, interstate sale and distribution of its "Bell-Ans" medicinal preparation for various digestive disorders, in substantial competition with others engaged in sale and distribution, in commerce as aforesaid, of other medicinal preparations designed to counteract indigestion and various digestive disorders; in extensively advertising its said product through newspapers of general circulation and advertisements in street and subway cars—

(*a*) Represented that its said "Bell-Ans" was a cure or remedy for indigestion and constituted a competent and effective treatment therefor, and would correct sour stomach and other digestive disturbances due to acid conditions, facts being it was not a cure or remedy for indigestion and had no beneficial therapeutic value in treatment thereof, in excess of furnishing temporary relief when such disorder was due to gastric hyperacidity, and it would not correct sour stomach or digestive disturbances due to acid condition or have any value in the treatment of such conditions, in excess of furnishing temporary relief as above noted;

(*b*) Represented that use of its said "Bell-Ans" would afford permanent relief from various symptoms of digestive disorders, such as flatulence, vertigo, dizziness, weakness, vomiting, nausea, and other distress, sour stomach, pain, sick headache, heartburn, and biliousness, and also from the discomforts associated with overeating, drinking, smoking, and irregular meals, facts being use of said "Bell-Ans" would not afford permanent relief from various symptoms of digestive disorders as above enumerated, and such product had no beneficial therapeutic value in treatment thereof, in excess of furnishing temporary relief when they were due to gastric hyperacidity; and

(*c*) Represented that said preparation was a cure or remedy for condition described as "acid urine," facts being such condition was not due to excess acid, but to deficiency thereof, and use of preparation in question would have no value in treatment thereof;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said representations were true, and of thereby inducing said public, because of such erroneous belief, to purchase its said preparation, and with result that trade was diverted to it from its competitor manufacturers, retailers or distributors of other preparations for treatment of digestive disorders, and who truthfully advertise their said products and effectiveness and therapeutic value thereof:

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

Before *Mr. William C. Reeves*, *Mr. W. W. Sheppard*, and *Mr. Edward E. Reardon*, trial examiners.

Mr. Reuben J. Martin and *Mr. Charles S. Cox* for the Commission.

Clark, Sickels & Barton, 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 Bell & Co., Inc., has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Bell & Co., Inc., is a corporation organized under the laws of the State of New Jersey with its principal office and place of business located at Orangeburg, within the State of New York. Said respondent is now and for more than 1 year last past has been engaged in the manufacture and sale of a proprietary remedy for indigestion called "Bell-Ans" and the distribution thereof between and among the various States of the United States. It causes said "Bell-Ans" when sold by it to be transported to the purchasers thereof located in the State of New York and various States of the United States other than the State or States in which said shipments originated. There is now and has been for a long time, to wit, more than 1 year last past, a constant current in trade and commerce by respondent in said "Bell-Ans" between and among the various States of the United States.

In the course and conduct of its said business, said respondent is now and for a long time, to wit, more than 1 year last past, has been in substantial competition in commerce between and among the various States of the United States with various other corporations, partnerships, firms, and individuals engaged in the interstate sale and distribution of other medical preparations designed to counteract indigestion and the symptoms thereof.

PAR. 2. The preparation "Bell-Ans" sold and distributed by said respondent contains among other ingredients sodium bicarbonate and is put up in tablet form.

PAR. 3. Said respondent, in the course and conduct of its said business as hereinbefore set out in paragraph 1, has been and now is engaged in extensive advertisement of its said product as a means

of furthering and aiding in the interstate sale and distribution of said "Bell-Ans," and as media of advertising it has been and now is using newspapers and advertisements in street cars and subway cars.

Said respondent in its said advertisements of the products known as "Bell-Ans" manufactured and sold by it has made and is now making various false, deceptive and misleading statements concerning said product. Among the said statements which said respondent has used and is now using in its advertisements in newspapers and on street car cards and in its circulars distributed with its said product are the following:

Now I Eat

HOT DOGS

Upset Stomach Goes

in Jiffy with Bell-ans

BELL-ANS

For Indigestion

6 Bell-Ans

Hot Water

Sure Relief

BELL-ANS For Indigestion Due to Excess Acid.

BELL-ANS is a combination of willow charcoal, sodium bicarbonate U. S. P., carminatives and pharmacopeial flavoring oils. It contains nothing else and is absolutely harmless.

It quickly and pleasantly relieves flatulence, vertigo, dizziness, weakness, vomiting, nausea and other distress when caused by too much acid.

For correcting sour stomach, pain, * * * sick headache * * * etc. due to acid.

* * * for quickly and harmlessly relieving even the most severe and painful cases (of acid or sour stomach) there is nothing like BELL-ANS when promptly and properly taken.

For severe and Acute Indigestion, Colic, etc., caused by hyperacidity, take Six (6) BELL-ANS crushed and stirred into a glass of HOT water and repeat every 10 minutes.

For Sick-Headache, Heartburn, Sour Stomach, Nausea, Biliousness, Vomiting, Dizziness, etc. due to acid, etc.

For Obstinate or Chronic Indigestion, Gas, etc.

* * * gives prompt and grateful relief in the colics, sour stomachs, and other digestive disturbances so often due to over-acid conditions from which the young frequently suffer.

For Acid Urine (frequent calls), Overeating and Drinking, Smoking and Irregular Meals.

Whereas in truth and in fact "Bells-Ans" is not a cure for indigestion and will not in truth and in fact remove the symptoms of indigestion nor relieve indigestion nor correct sour stomach or other digestive disturbances due to acid conditions, and is not harmless.

Respondent in its said advertising has and is creating upon the public the impression and the belief that "Bell-Ans" has beneficial therapeutic effects, and will relieve and cure digestive disturbances due to acid conditions and will relieve and cure indigestion, whereas in truth and in fact said "Bell-Ans" will not relieve or cure digestive disturbances and will not relieve or cure indigestion. Said respondent also in its said advertising has and is creating upon the public an impression that "Bell-Ans" is absolutely harmless, whereas in truth and in fact said preparation is not harmless but its said use may produce serious results.

PAR. 4. The use by the said respondent, Bell & Co., Inc., of the foregoing false, deceptive and misleading representations alleged to be used by said respondent in paragraph 3 hereof, have had and do now have the capacity and tendency to mislead and deceive and do now mislead and deceive the public into the erroneous and untrue belief that "Bell-Ans" is in truth and in fact a harmless preparation which will relieve and cure indigestion and other digestive disturbances due to acid conditions, and has thereby induced and does now induce the consuming public and especially that portion of the public suffering from indigestion, acting in said erroneous belief, to purchase "Bell-Ans" in preference to other digestive remedies offered for sale by manufacturers, retail dealers and distributors. As a result of such false, deceptive, and misleading representations on the part of said respondent trade is diverted to respondent from such manufacturers, retail dealers, or distributors of other digestive remedies, and thereby injury has been done and is being done by respondent.

PAR. 5. Said false, deceptive, and misleading representations of said respondent contained in its advertisements have resulted in injury to respondent's competitors and to retail dealers and in prejudice to the buying public and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress approved September 26, 1914, and entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 30, 1936, issued and subse-

quently served its complaint in this proceeding upon respondent, Bell & 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 attorneys for the Commission, and in opposition to the allegations of the complaint by Arthur L. Barton, attorney for the respondent, before examiners of the Commission theretofore, duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on 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. The respondent, Bell & Co., Inc., is a corporation organized under the laws of the State of New Jersey, with its principal office and place of business located at Orangeburg, within the State of New York.

PAR. 2. Said respondent is now, and for more than 5 years last past has been, engaged in the manufacture and in the sale and distribution in commerce among and between the various States of the United States of a medicinal preparation designed "Bell-Ans," which has been offered for sale and sold as a treatment for various digestive disorders. Respondent causes said product, when sold by it, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product, "Bell-Ans," among and between the various States of the United States.

PAR. 3. In the course and conduct of its said business, said respondent is now and for more than 5 years last past has been in substantial competition in commerce among and between the various States of the United States with various other corporations, partnerships, firms, and individuals engaged in the sale and distribution in commerce among and between the various States of the United States

of other medicinal preparations designed to counteract indigestion and various digestive disorders.

PAR. 4. In the course and conduct of its aforesaid business, respondent has engaged in extensive advertisement of its said product "Bell-Ans" as a means of furthering and aiding in the sale and distribution thereof, and as media of such advertising it has employed newspapers of general circulation and advertisements carried in street cars and subway cars.

Said respondent in advertising its said product "Bell-Ans" has made various false, deceptive, and misleading statements concerning said product. Among and typical of the said statements which respondent has used in advertisements in newspapers and in its circulars distributed with its said product are the following:

1. Statements in newspaper advertising—

Now I Eat
CABBAGE
Upset Stomach Goes
in Jiffy with Bell-Ans.

Bell-Ans
For Indigestion

(Picture of bottle with 6 tablets being emptied into a glass of water)

6 Bell-Ans
Hot Water
Sure Relief.

Other advertisements were disseminated by the respondent in newspapers and other periodicals which advertisements were identical with the above quoted advertisement with the exception that the word "Cabbage" was replaced by one of the following words: Cucumbers, Hot Dogs, or Welsh Rabbit.

2. Statements in circulars—

BELL-ANS
For Indigestion
Due to excess acid

BELL-ANS is a combination of willow charcoal, sodium bicarbonate U. S. P., carminatives and pharmacopeial flavoring oils. It contains nothing else and is absolutely harmless.

BELL-ANS is perfectly harmless and pleasant to take and may be taken with no injurious or objectionable results by anyone of any age or condition of health having indigestion due to hyperacidity. It quickly and pleasantly relieves flatulence, vertigo, dizziness, weakness, vomiting, nausea and other distress when caused by too much acid. It aids the digestion of food and tends to restore the stomach to a normal condition of acidity. For correcting sour stomach, pain, heartburn, sick headache, gas, bloating, etc., due to acid, the usefulness of BELL-ANS is widely known. Too much heavy, greasy or rich food should be avoided by those with a tendency to acid or sour stomach, but for quickly and harmlessly relieving even the most severe and painful cases there is nothing like BELL-ANS when promptly and properly taken.

BELL-ANS may be taken in any convenient way, with or without water and in any desired quantity; but Doctors have proved that for quickest and best results Six (6) Tablets should be crushed and stirred into a glass of HOT water, so HOT it must be sipped.

For Severe and Acute Indigestion, Colic, etc., caused by hyperacidity, take six (6) BELL-ANS crushed and stirred into a glass of HOT water and repeat every 10 minutes.

For Sick Headache, Heartburn, Sour Stomach, Nausea, Biliousness, Vomiting, Dizziness, etc., due to acid, take SIX (6) BELL-ANS Tablets crushed and stirred into a glass of HOT water and repeat the dose every 30 minutes as necessary.

For Obstinate or Chronic Indigestion, Gas, etc., caused by excess acid, take SIX (6) BELL-ANS in a little HOT Water regularly and persistently one-half hour after each meal for several weeks.

For Infants and young children, crush and stir SIX (6) BELL-ANS Tablets in a small glass of HOT water and give a teaspoonful, every few minutes as required. This is pleasant and harmless and gives prompt and grateful relief in the colics, sour stomachs, and other digestive disturbances so often due to over-acid conditions from which the young frequently suffer.

For Hyperacidity, Acid Urine (frequent calls), Overeating and Drinking, Smoking and Irregular Meals. Take SIX (6) BELL-ANS in HOT water upon arising, one-half hour after noon and evening meals and at bed-time. This is a harmless and effective treatment that may be continued for any necessary length of time with beneficial results.

No hesitancy need be felt about giving BELL-ANS to infants and young children or feeble old persons as there is no one of any age or condition of health having acidity to whom it would be in the slightest degree injurious or objectionable.

PAR. 5. Through the use of the advertising statements herein set forth and others similar thereto not specifically set out herein, respondent represents that its product "Bell-Ans" is a cure or remedy for indigestion and constitutes a competent and effective treatment therefor; that it will correct sour stomach and other digestive disturbances due to acid conditions and is a cure or remedy for the condition described as "acid urine."

In the same manner respondent also represents that the use of its preparation "Bell-Ans" will afford permanent relief from various symptoms of digestive disorders such as flatulence, vertigo, dizziness, weakness, vomiting, nausea and other distress, sour stomach, pain, sick headache, heartburn, and biliousness, and also from the discomforts associated with overeating, drinking, smoking, and irregular meals.

PAR. 6. Based upon the testimony of medical experts the Commission finds that respondent's preparation "Bell-Ans" is not a cure or remedy for indigestion and has no beneficial therapeutic value in the treatment thereof in excess of furnishing temporary relief when such disorder is due to gastric hyperacidity by neutralizing the hydrochloric acid in the stomach and intestines and thereby causing

a release of the gas pressure on various muscles of the stomach and intestines. Said product will not correct sour stomach or digestive disturbances due to acid condition or have any value in the treatment of such conditions in excess of furnishing temporary relief when such disorders are due to gastric hyperacidity. "Acid urine" is not due to an excess acid condition but to a deficiency of acid and the use of said preparation would have no value in the treatment of such condition.

The Commission further finds that the use of respondent's preparation "Bell-Ans" will not afford permanent relief from various symptoms of digestive disorders, such as flatulence, vertigo, dizziness, weakness, vomiting, nausea, sour stomach, pain, sick headache, heartburn, biliousness, and discomforts from overeating and drinking, smoking and irregular meals, and has no beneficial therapeutic value in the treatment of the said disorders in excess of furnishing temporary relief when such disorders are due to gastric hyperacidity.

PAR. 7. The use by respondent of the aforesaid false, deceptive, and misleading representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true, and has thereby induced the purchasing public, because of such erroneous belief, to purchase respondent's preparation. As a result of such false, deceptive, and misleading representations on the part of said respondent, trade has been diverted to respondent from its competitors consisting of those manufacturers, retail dealers or distributors of other preparations for the treatment of digestive disorders, who truthfully advertise their said products and the effectiveness and therapeutic value thereof when used.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before examiners 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 Charles S. Cox, counsel for the Commission,

and by Arthur L. Barton, 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 Bell & Company, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its preparation known as "Bell-Ans," or any other preparation of substantially similar composition 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 representing directly or indirectly.

1. That said preparation is a cure or remedy for indigestion or that it has any therapeutic value in the treatment thereof in excess of furnishing temporary relief when such condition is due to gastric hyperacidity.

2. That said preparation is a cure or remedy for symptoms of digestive disorders such as flatulence, vertigo, dizziness, weakness, vomiting, sour stomach, pain, heartburn, nausea, sick headache, biliousness or discomforts from overeating, drinking, and irregular meals, or that it is a competent treatment for such conditions in excess of furnishing temporary relief when such conditions are symptomatic of gastric hyperacidity.

3. That said preparation will correct sour stomach or digestive disturbances due to acid condition or has any value in the treatment thereof in excess of furnishing temporary relief when such disorders are due to gastric hyperacidity.

4. That said preparation constitutes a cure or remedy for the condition known as "acid urine" or possesses any therapeutic value in the treatment thereof.

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

Complaint

IN THE MATTER OF

MOREHOUSE MANUFACTURING COMPANY, TRADING AS THE SHAVING POWDER COMPANY

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

Docket 3721. Complaint, Feb. 23, 1939—Decision, Dec. 11, 1940

Where a corporation engaged in manufacture of its "Magic Shaving Powder" for hair removal and in interstate sale thereof; in advertisements of its said product which it disseminated and caused to be disseminated through insertion in newspapers having general circulation among the colored race and 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—

(*a*) Represented directly and by inference that said "Magic Shaving Powder" was a new method of removing hair and that a person could shave without a razor and that its use was harmless;

Facts being said product was a depilatory which accomplished results by dissolving hair rather than by cutting as in shaving, and was not a new method for removing hair and was not harmless in all cases, but, by virtue of presence therein, as solvents and active ingredients, of barium sulphide and calcium hydroxide might, under customary and usual conditions, be harmful to skin and underlying structures of people having tender skin, and, more particularly, those of the white race, and in such cases result in temporary rash or dermatitis, and also, by reason of presence of said ingredients, might result in injury to eyes of the careless user; and

(*b*) Failed to include in its said advertisements cautionary statements to the effect that said powder should not be used by those having tender skin and should not be allowed to get into eyes of user thereof;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true and that its said product was a new method of removing hair and was not a depilatory, and that its use was unqualifiedly harmless and of causing portions of said public because of such belief, thus engendered, 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.

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

Mr. Reuben J. Martin and *Mr. Morton Nesmith* for the Commission.

Adams, Douglas & Brennan, of Savannah, 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 the Morehouse Manufacturing Co., a corporation, trading under the name of Shaving Powder Co., hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Morehouse Manufacturing Co., is a corporation created and existing under and by virtue of the laws of the State of Georgia with its principal office and place of business located in the city of Savannah within the said State of Georgia.

PAR. 2. Said respondent, trading under the name of Shaving Powder Co., is now, and for more than 5 years last past has been, engaged in the manufacture, distribution, and sale of a preparation for use in removing hair under the trade name "Magic Shaving Powder." Said respondent causes said preparation, when sold by it, to be transported from its place of business in Savannah, Ga., to the purchasers thereof located in various 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 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 preparation by insertion in newspapers having a general circulation, 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:

Magic Shaving Powder. Shave without a razor.
Magic Shaving Powder. No more trouble.
At last science has found a way to remove a beard without shaving.

Merely apply Magic Shaving Powder as directed then wipe off leaving a clear smooth skin.

Have a clean shave without using a razor. Simply wipe your beard off.

All of said statements together with other statements of similar import and meaning appearing in respondent's advertising literature, purport to be descriptive of respondent's preparation and of its effectiveness in use. In all of its advertising literature, respondent, directly and by inference, through the statements and representations herein set out, and through other statements and representations of like or similar import and effect, represents that the preparation, "Magic Shaving Powder," is, in fact, a shaving powder; that it is a new method of removing hair, and that its use is harmless and will leave the user with a clear, smooth skin.

PAR. 4. The representations made by the respondent and the implications therefrom as to the nature and effectiveness of its said preparation are false or grossly exaggerated, and greatly exceed those which might truthfully be made for said preparation. In truth and in fact, Magic Shaving Powder is not a shaving powder; it is not a new method for removing hair; and Magic Shaving Powder is not harmless in all cases and its use will not leave the user with a clear, smooth skin.

In truth and in fact, the use of Magic Shaving Powder may, under customary and usual conditions, be harmful to the skin and the underlying structures of the user thereof because of the ingredients from which said preparation is compounded, and its use may also result in severe injury to the eyes, of the user thereof.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said preparation, Magic Shaving Powder, 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, Magic Shaving Powder, is in fact a shaving powder, is a new method of removing hair and that its use is harmless and will leave the user with a clear, smooth skin, and causes a portion of the purchasing public because of said erroneous and mistaken belief so engendered to purchase respondent's said preparation. As a result thereof injury has been and is now being done by respondent to a substantial portion of the purchasing public 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 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 23d day of February 1939, issued and subsequently served its complaint in this proceeding upon said respondent, Morehouse Manufacturing Co., trading as The Shaving Powder Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 14, 1939, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent's counsel, W. W. Douglas, 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 filing of a report upon the evidence by the trial examiner, 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 now being 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, Morehouse Manufacturing Co. is a corporation created and existing under and by virtue of the laws of the State of Georgia with its principal office and place of business located in the city of Savannah within the said State of Georgia.

PAR. 2. Said respondent, trading under the name of The Shaving Powder Co., is now, and for more than 5 years last past (respondent states for more than 39 years) has been, engaged in the manufacture, distribution, and sale of a preparation for use in removing hair

under the trade name "Magic Shaving Powder." Said respondent causes said preparation when sold by it to be transported from its place of business in Savannah, Ga., to the purchasers thereof located in various 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 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 advertisements concerning its said preparation by insertion in newspapers having a general circulation among the colored race 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 were likely to induce directly or indirectly the purchase of its said preparation; and has disseminated and has caused the dissemination of advertisements concerning its preparation by various means for the purpose of inducing or which were 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, which are true excerpts from said advertisements:

Magic Shaving Powder. Shave without a razor.

Magic Shaving Powder. No more trouble.

At last science has found a way to remove a beard without shaving.

Merely apply Magic Shaving Powder as directed, then wipe off leaving a clear, smooth skin.

Have a clean shave without using a razor. Simply wipe your beard off.

All of said statements together with other statements of similar import and meaning appearing in respondent's advertising literature, purport to be descriptive of respondent's preparation and of its effectiveness in use. In all of its advertising literature respondent directly or by inference through the statements and representations herein set out and through other statements and representations of like or similar import and effect represents that the preparation "Magic Shaving Powder" is a new method of removing hair, that a person can shave without a razor and that its use is harmless.

PAR. 4. The representations made by respondent and the implications therefrom as to the nature and effectiveness of its said preparation are deceptive and exaggerated and greatly exceed those which

might truthfully be made for said preparation in that Magic Shaving Powder is a depilatory which accomplishes results by dissolving hair rather than by cutting as in shaving and is not a new method for removing hair and Magic Shaving Powder is not harmless in all cases as hereinafter specified.

Two of the active ingredients of Magic Shaving Powder are barium sulphide and calcium hydroxide which ingredients are capable of dissolving horny substances such as hair and the use of Magic Shaving Powder may under customary and usual conditions be harmful to the skin and the underlying structures thereof of people who have tender skin and more particularly those of the white race, in that the use of the preparation by people with tender skins and more particularly those of the white race may result in a temporary rash or dermatitis. Also because of the ingredients barium sulphide and calcium hydroxide its use may result in injury to the eyes of the careless user.

PAR. 5. Respondent has discontinued all newspaper, periodical and direct-letter advertising since February 24, 1939.

PAR. 6. The use by the respondent of the foregoing, deceptive and exaggerated statements, representations, and advertisements disseminated as aforesaid with respect to said preparation, Magic Shaving Powder, has had 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 respondent's said preparation is a new method of removing hair, is not a depilatory, and that its use is unqualifiedly harmless, and has caused a portion of the purchasing public, because of said erroneous and mistaken belief so engendered to purchase respondent's said preparation.

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 fur-

ther 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, Morehouse Manufacturing Co., a corporation, trading as The Shaving Powder Co., 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 Magic Shaving Powder, or any product of substantially similar composition, or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly—

1. Disseminating or causing to be disseminated any advertisements (*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 Magic Shaving Powder is a new method for removing hair or that the method prescribed for the use of Magic Shaving Powder constitutes shaving, or which advertisements fail to contain cautionary statements to the effect that Magic Shaving Powder should not be used by those having a tender skin and should not be allowed to get into the eyes of the user thereof.

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 Magic Shaving Powder, which advertisements contain any of the representations prohibited in paragraph 1 hereof, or which fail to contain cautionary statements to the effect that Magic Shaving Powder should not be used by those having a tender skin, and should not be allowed to get into the eyes of the user thereof.

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

IN THE MATTER OF

UNION STARCH & REFINING COMPANY, AND UNION SALES CORPORATION

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 3804. Complaint, June 1, 1939—Decision, Dec. 11, 1940

Where a corporation and its wholly owned sales subsidiary, respectively engaged in manufacture, and in sale and distribution, of glucose or corn sirup unmixed, to, mostly, manufacturers in other States 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 (1) most kinds of which such sirup 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 a substantial part of cost of raw material used in particular candies having relatively high sirup content and of total cost of manufacturing extensive line of candies having wide range of sirup contents, and with costs of such purchasers, thus unfavored, increasing over such costs of favored purchasers directly as amount of discrimination between them increased and as sirup content of candy increased, and in (2) many of which candies containing substantial quantity of such sirup and priced at but few cents per pound, and bearing no differentiating name or brand, sellers attracted customers by selling at only a small fraction of a cent per pound lower than a competitor, and especially so in case of sale of such candies to chain stores and other purchasers of large quantities, to whom such small difference in price was determinative in placing their business, so that, under circumstances aforesaid, unfavored purchaser's higher raw material costs were difficult, if not impossible, to recover by increasing price of candy manufactured if such unfavored purchaser hoped to maintain volume sales—

(*a*) Sold and delivered their said sirup in several types and sizes of containers at prices per hundredweight, which increased over tank car price per hundredweight according to size and type of container, with differentials ranging from 33 cents for barrels to $1.08 for five gallon kegs, and from 13 cents to 33 cents for returnable drums, depending on presence or absence of return freight thereon and amount thereof; and

(*b*) Sold their said sirup, between June 19, 1936, and July 23, 1937, at higher delivered prices per hundredweight to purchasers located in certain cities other than Chicago, Danville, North Chicago, Dixon, and Zion, Ill., and Milwaukee, Wis., than those at which they sold their said sirup in containers of like size and type to purchasers located in cities aforesaid, and thereafter sold their said sirup to purchasers in all cities other than Chicago at higher prices per hundredweight than those at which they sold said product in containers of like size and type to purchasers located in city aforesaid, and at prices which were not uniformly higher, but varied with geographical

location of cities in which purchasers paying same were located, and which involved, for earlier period, and for later period extending to present time, substantially same differentials for respective periods;

With the result that—

(1) Through sale of their said sirup at aforesaid prices, differences between which were not justified by them, they discriminated in price between purchasers paying such differing prices for their product aforesaid;

(2) Effect of such higher sirup cost on those unfavored purchasers above described, selling candies containing substantial quantity of such sirup and priced at but few cents per pound with no differentiating name, etc., and under circumstances hereinabove indicated, involving sales to chain stores, etc., was to decrease profit to extent necessary to absorb higher direct per unit cost imposed by higher sirup cost, as long as particular unfavored purchaser attempted to sell his candy at a competitive price, and, where such absorption caused impairment of profit in any material degree, to bring about selective sales only by such unfavored purchaser at noncompetitive prices to customers on basis of service or some other nonprice basis, and with profit's further impairment through reduced sales volume, unused capacity and increased overhead unit costs for all products thereby brought about;

(3) Such impairment of profits tended to weaken financially existing unfavored candy manufacturers, and might bring about their elimination from the industry and prove an effective deterrent to the establishment of new candy manufacturing enterprises in those areas in which they discriminated as above set forth; and

(4) There was conferred a competitive advantage upon favored purchasers receiving and enjoying such discriminations and whose benefits in lower costs and prices and greater profits, as compared with unfavored purchasers, could well lead to domination by said favored purchasers of the candy industry; and

With the result that the effect of such discriminations, as above set forth, had been or might 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:

Held, That, in discriminating in price between different purchasers of glucose as above set forth, said corporation and its subsidiary violated the provisions of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. John P. Bramhall*, trial examiner.

Mr. Frank Hier and *Mr. P. R. Layton* for the Commission.

Matson, Ross, McCord & Ice, of Indianapolis, Ind., 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 vio-

lated and are 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, Union Starch & Refining Co., is a corporation organized and existing under the laws of Indiana with its principal office and place of business at 301 Washington Street in the city of Columbus and State of Indiana. Respondent, Union Sales Corporation, is a corporation organized under the laws of the State of Indiana and has its principal office and place of business at 301 Washington Street, city of Columbus and State of Indiana. Respondent, Union Sales Corporation, is a wholly owned sales subsidiary of respondent Union Starch & Refining Co., through which products manufactured by Union Starch & Refining Co. are sold and distributed. Union Starch & Refining Co. owns the entire capital stock of Union Sales Corporation and controls and directs Union Sales Corporation.

PAR. 2. Respondent, Union Starch & Refining Co., owns and operates a plant at Granite City, Ill., and also owns a plant at Edinburg, Ind. These plants have a corn grinding capacity in excess of 19,000 bushels per day, with complete facilities for the finished fabrication of corn products both for household and industrial use. The Granite City plant has a corn grinding capacity of 15,000 bushels daily.

PAR. 3. For many years respondents have been and are 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 sirup; 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 sirup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of sirups.

The principal byproducts of corn resulting in the corn products business are gluten feed, corn oil, corn-oil cake, and corn-oil meal.

The Union Starch & Refining Co., in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of their business, the respondents have been and are now manufacturing the aforesaid commodities at the aforesaid plants and have sold and shipped and do now sell and ship such commodities in commerce between and among the various States of the United States from the States in which their factories are located across state lines to purchasers

thereof located in States other than the States in which respondents' said plants are 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 respondents have been and are 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 respondents have been and are 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 respondents to other purchasers generally competitively engaged with the first mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by said respondents, as set forth in paragraph 5 herein, may be substantially to lessen competition in the sale and distribution of corn products between the said respondents and their competitors; tend to create a monopoly in the line of commerce in which the respondents are engaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the said respondents and their competitors.

PAR. 7. The effect of said discriminations in price made by said respondents, as set forth in paragraph 5 herein, may be substantially to lessen competition between the buyers of said corn products from respondents receiving said lower discriminatory prices and other buyers from respondents 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 respondents are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from respondents 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 respondents 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 mo-

nopolies 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 respondents Union Starch & Refining Co., a corporation, and Union Sales Corporation, a corporation, charging them with discriminating in price between different purchasers of respondents' various products in violation of subsection (*a*) of section 2 of said act as amended. After the issuance and service of said complaint an answer was filed by both respondents. Thereafter, pursuant to written notice to the respondents of the time, date, and place, hearings were commenced on June 17, 1940, before John P. Bramhall, an examiner designated by the Commission, at which hearing evidence in support of the charge made in the complaint was introduced by Frank Hier and P. R. Layton, attorneys for the Commission, and other evidence was introduced into the record by stipulation between counsel for the Commission and counsel for the respondents. Respondents further stipulated that they desired to offer no evidence in opposition to the charges contained in the complaint, and that they waived all intervening procedure, oral arguments, the filing of briefs, further hearings, and any report by the trial examiner upon the evidence, 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Union Starch & Refining Co. and Union Sales Corporation, are corporations organized and existing under the laws of Indiana with their principal offices and place of business at 301 Washington Street in the city of Columbus and State of Indiana. Respondent, Union Sales Corporation, is a wholly owned sales subsidiary of respondent, Union Starch & Refining Co., through which products manufactured by Union Starch & Refining Co. are sold and distributed. Union Starch & Refining Co. owns the entire capital stock of Union Sales Corporation and directs and controls said respondent, Union Sales Corporation.

PAR. 2. For many years respondent, Union Starch & Refining Co., has been and is now engaged in the business of manufacturing and re-

spondent Union Sales Corporation has been and is now engaged in the business of distributing and selling glucose or corn sirup unmixed. Such sirup is one of the principal products derived in the refining of corn.

PAR. 3. For the purpose of refining corn in the manufacture of such sirup Union Starch & Refining Co. owns and operates a corn refining plant located at Granite City, Ill., which plant has a corn grinding capacity in excess of 19,000 bushels per day with facilities for the finished fabrication of corn products, including such sirup. Respondent, Union Starch & Refining Co., also owns but does not operate a corn refining plant located at Edinburg, Ind.

PAR. 4. For many years in the course and conduct of its business respondent, Union Sales Corporation, has sold and shipped and does now sell and ship such sirup in commerce between and among the several States of the United States causing such sirup to be sold and shipped from said plant of the respondent, Union Starch & Refining Co., at Granite City, Ill., across State lines to purchasers thereof located in other States of the United States and in competition with other corporations engaged in similar lines of commerce.

PAR. 5. Most of such purchasers so located purchase such sirup, 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 sirup has been sold and delivered by respondents in several types and sizes of containers at prices per hundredweight which increase over the tank car price per hundredweight according to the size and type of container as follows:

Container	Price per hundredweight over tank car	
Barrels	$0.33	
Half barrels	0.58	
10-gallon kegs	0.98	
5-gallon kegs	1.08	
Returnable drums	0.13	Where there is no return freight on empty drums.
" "	0.18	Where return freight on empty drum is between 50 and 75 cents per hundredweight.
" "	0.23	Where return freight on empty drum is between 76 and 90 cents per hundredweight.
" "	0.28	Where return freight on empty drum is between 91 cents and $1.
" "	0.33	Where return freight on empty drum is more than $1.
Tank truck	0.10	Where delivery is made by respondents' truck.
" "	0.02	Where delivery is made by purchaser's truck.

PAR. 6. Between June 19, 1936, and July 23, 1937, respondent has sold such sirup at higher delivered prices per hundredweight to purchasers located in certain cities other than Chicago, Ill., Danville, Ill., North Chicago, Ill., Dixon, Ill., Zion, Ill., and Milwaukee, Wis., than it has sold such sirup in containers of like size and type to purchasers located in said cities of Chicago, Ill., Danville, Ill., North Chicago, Ill., Dixon, Ill., Zion, Ill., and Milwaukee, Wis., and between Juy 23, 1937, and the present time respondent has sold such sirup to purchasers located in all cities other than Chicago, Ill., at higher prices per hundredweight than it sold such syrup in containers of like size and type to purchasers located in Chicago, Ill., and such higher prices were not uniformly higher but varied with the geographical location of the cities in which the purchasers paying the higher prices were located.

Thus, on the following dates respondent sold such sirup to such purchasers located respectively in each of the following cities at the delivered prices per hundredweight which are shown opposite such 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 container:

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill.	$2.94	$3.04	$2.29	$2.09
Danville, Ill.	2.94	3.17	2.43	2.20
Louisville, Ky.	3.26	3.34	2.63	2.43
Chattanooga, Tenn.	3.34	3.42	2.71	2.51
Nashville, Tenn.	(1)	3.40	2.69	2.49
Memphis, Tenn.	(1)	(1)	(1)	2.49
Fort Worth, Tex.	(1)	(1)	(1)	2.89
St. Louis, Mo.	3.11	3.20	2.47	2.27
St. Joseph, Mo.	3.32	3.40	2.69	2.49
Kansas City, Mo.	(1)	3.40	2.69	2.49

[1] No sales.

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 August 1, 1937, until the present time.

PAR. 7. By selling such sirup at said different prices, as found in paragraphs 5 and 6, the differences between which prices not having been justified by respondent, it has discriminated in prices between such purchasers who have paid the different prices for such sirup.

PAR. 8. The result of said discriminations has been to place the unfavored purchasers paying the higher prices for such sirup under a competitive disadvantage.

Such sirup 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 sirup 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 sirup content, as well as of the total cost of manufacturing an extensive line of candies having a wide range of sirup contents. Said costs of the unfavored of such purchasers increase over said costs of such favored purchasers directly as the amount of the discrimination between them increases, and as the sirup content of the candy increases.

Many candies containing a substantial quantity of such sirup 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 sirup is to decrease profit to the extent necessary to absorb the higher direct per unit cost imposed by the higher sirup 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 noncompetitive 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 weaken financially existing unfavored candy manufacturers; may bring about the elimination of such unfavored candy manufacturers from the industry and may prove an effective deterrent to the establishment of new candy manufacturing enterprises in those areas in which respondents discriminate as found above.

A further result of said discrimination has been to confer upon the favored purchasers receiving the benefit of said discriminations a competitive advantage. As compared with the unfavored purchasers, their costs and prices are lower, their profits greater. Such benefits can well lead to a domination by them of the candy industry.

Therefore the Commission finds that the discriminations found in paragraphs 5 and 6 have been or 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 respondents, Union Starch & Refining Co. and Union Sales Corporation, have 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 respondents, 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 respondents, and further hearings, oral argument, the filing of briefs, and a report by the trial examiner having been waived by the respondents; the Commission having made its findings as to the facts and its conclusion, which findings and conclusion are hereby made a part hereof, that respondents have 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 respondents, Union Starch & Refining Co. and Union Sales Corporation, their officers, representatives, agents, and employees, directly or indirectly, in connection with the offering for sale, sale, and distribution of glucose or corn sirup 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 sirup unmixed, of like grade and quality, either

directly or indirectly in the manner and degree as found by the Commission in paragraphs 5 and 6, 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 5 and 6 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 the Commission's findings as to the facts and conclusion.

4. From otherwise selling said glucose or corn sirup unmixed to some purchasers thereof at different prices 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 respondents 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 respondents from showing that their 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 respondents, Union Starch & Refining Co. and Union Sales Corporation, shall within 60 days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

A. SARTORIUS & COMPANY, INC. TRADING AS PLAT-NUM PERL LABORATORIES

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

Docket 3966. Complaint, Dec. 8, 1939—Decision Dec. 11, 1940

Where a corporation engaged in interstate sale and distribution of manicure products, including nail protector and nail polish remover, in substantial competition with others engaged in sale and distribution of manicure products in commerce as aforesaid, and including some who do not use methods and engage in acts and practices below described—

(*a*) Represented in advertisements through such statements as "Plat-Num Olive Oil Compound Nail Polish Remover for dry, brittle nails," that its said product was made from or contained olive oil and that by reason of presence of such oil it would improve or benefit the condition of dry, brittle nails, facts being quantity of olive oil therein contained was negligible, it could not be truthfully represented as an olive oil product, and olive oil contained therein was so small as to be incapable of relieving or improving to any appreciable extent condition of dry, brittle nails; and

(*b*) Represented through such statements as "Plat-Num Nail Protector * * * encourages growth * * * strengthens nails," disseminated in advertisements among prospective purchasers that its said product stimulated the growth of the nails and strengthened the same, facts being it did not accomplish such results and was wholly incapable of effecting the same;

With effect of misleading and deceiving consuming public into mistaken and erroneous belief that said representations were true and by reason thereof into purchasing substantial quantity of its said products, and with result, as consequence, that trade was unfairly diverted to it from its said 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 competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. Gerard A. Rault for the Commission.

Mr. Henry L. Finkelstein, 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 A. Sartorius & Co., Inc., a corporation, trading as Plat-Num Perl 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, A. Sartorius & 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 80 Fifth Avenue, New York, N. Y. Respondent is now, and has been for some time last past, engaged in the sale and distribution in commerce, of manicure products, including a product intended for use as a nail polish remover and a product intended for use as a nail protector.

PAR. 2. Respondent, in the course and conduct of its business aforesaid, has caused its said products, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid and at all times herein referred to, has been, and is, in substantial competition with other corporations and with firms, partnerships, and individuals similarly engaged in the business of selling and distributing manicure products 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 use the methods or engage in the acts and practices herein alleged.

PAR. 4. In the course and conduct of its business respondent has made false and misleading representations with respect to its said nail polish remover, which representations are disseminated among prospective purchasers. Among and typical of such false and misleading representations is the descriptive statement "Plat-Num Olive Oil Compound Nail Polish Remover for dry, brittle nails." By the use of such representation, together with others of similar import not specifically set out herein, the respondent represents that its said product is made from or contains olive oil and that said product, by reason of the presence of such oil, will improve or benefit the condition of dry, brittle nails.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact the quantity of olive oil contained in said product is negligible and said product cannot truthfully be represented as an olive oil product. The olive oil content in said product is so small as to be incapable of relieving or

improving to any appreciable extent the condition of dry, brittle nails.

PAR. 6. Respondent has also made false and misleading representations with respect to its product "Plat-Num Nail Protector," which representations are disseminated among prospective purchasers. Among and typical of such false and misleading representations is the descriptive statement:

Plat-Num Nail Protector * * * encourages growth * * * strengthens nails.

Through the use of such representations, together with other representations of similar import not specifically set out herein, respondent represents that its said product stimulates the growth of the nails and strengthens the nails.

PAR. 7. The foregoing representations are false and misleading. In truth and in fact the use of said product does not stimulate or encourage the growth of the nails nor does it serve to strengthen the nails. Said product is wholly incapable of effecting such results.

PAR. 8. A further practice of the respondent, in connection with the sale and distribution of its said products as aforesaid, is the use of the legend "Manufacturing Chemists" in connection with its corporate name, which said legend appears on respondent's business stationery and on other printed and written matter distributed by respondent among prospective purchasers. Through the use of such legends the respondent represents that it is the manufacturer of its said commodities.

PAR. 9. The foregoing representation is false and misleading. In truth and in fact the respondent does not manufacture either of said products but purchases said products from other sources.

PAR. 10. The use by the respondent of the aforesaid false and misleading representations has the capacity and tendency to, and does, mislead and deceive the consuming public into the mistaken and erroneous belief that said representations are true, and into the purchase of a substantial quantity of respondent's products on account of such beliefs.

As a result thereof, trade has been, and is being, unfairly diverted to respondent from its said competitors, and thereby substantial injury has been done, and is being done to competition in commerce among and between the various States of the United States.

PAR. 11. 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 of December 1939, issued and thereafter served its complaint in this proceeding upon said respondent A. Sartorius & Co., Inc., a corporation, trading as Plat-Num Perl Laboratories, charging it with the use of unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 31, 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 through its counsel, Henry L. Finkelstein, 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 such statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceedings without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on 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, A. Sartorius & 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 80 Fifth Avenue, New York, N. Y. Respondent is now and has been for some time last past, engaged in the sale and distribution in commerce of manicure products including a product intended for use as a nail polish remover and a product intended for use as a nail protector.

Par. 2. Respondent in the course and conduct of its business aforesaid has caused its said products when sold to be shipped from its

place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent in the course and conduct of its business as aforesaid and at all times herein referred to has been and is in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the business of selling and distributing manicure products in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are some who do not use the methods or engage in the acts and practices herein described.

PAR. 4. Respondent in the course and conduct of its business has made false and misleading representations with respect to its nail polish remover which representations have been disseminated among prospective purchasers. Among and typical of such false and misleading representations is the descriptive statement "Plat-Num Olive Oil Compound Nail Polish Remover for dry, brittle nails." By the use of such representation together with others of similar import not specifically set out herein, the respondent represents that its said product is made from or contains olive oil and that said product by reason of the presence of such oil will improve or benefit the condition of dry, brittle nails.

PAR. 5. The foregoing representations are false and misleading. In truth and in fact the quantity of olive oil contained in said product is negligible and said product cannot truthfully be represented as an olive-oil product. The olive oil content in said product is so small as to be incapable of relieving or improving to any appreciable extent the condition of dry, brittle nails.

PAR. 6. Respondent has also made false and misleading representations with respect to its product "Plat–Num Nail Protector" which representations are disseminated among prospective purchasers. Among and typical of such false and misleading representations is the descriptive statement:

> Plat–Num Nail Protector * * * encourages growth * * * strengthens nails.

Through the use of such representations, together with other representations of similar import not specifically set out herein, respondent represents that its said product stimulates the growth of the nails and strengthens the nails.

PAR. 7. The foregoing representations are false and misleading. In truth and in fact, the use of said product does not stimulate or encourage the growth of the nails nor does it serve to strengthen the nails. Said product is wholly incapable of effecting such results.

PAR. 8. The use by the respondent of the aforesaid false and misleading representations has the capacity and tendency to and does mislead and deceive the consuming public into the mistaken and erroneous belief that said representations are true and into the purchase of a substantial quantity of respondent's products because of such belief.

As a result thereof, trade has been and is being unfairly diverted to the respondent from its said competitors and thereby substantial injury has been done and is being done 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 of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, A. Sartorius & Co., Inc., a corporation, trading as Plat-Num Perl Laboratories, or trading under any other name, 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 preparations designated "Plat-Num Olive Oil Compound Nail Polish Remover" and "Plat-Num Nail Protector," or any cosmetic preparations of substantially similar composition 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 advertisement represents, directly or through inference, that said preparation "Plat-Num Olive Oil Compound Nail Polish Remover" will relieve or improve the condition of dry, brittle nails; that said preparation "Plat-Num Nail Protector" stimulates the growth of the nails or strengthens the nails.

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 contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondent, A. Sartorius & Co., Inc., a corporation, trading as Plat-Num Perl Laboratories or trading under any other name, its officers, 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 its cosmetic preparation designated "Plat-Num Olive Oil Compound Nail Polish Remover," or any cosmetic preparation of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

Using the words "Olive Oil," or any other word or words of similar import or meaning, to designate, describe or refer to respondent's cosmetic preparation now designated "Plat-Num Olive Oil Compound Nail Polish Remover," or otherwise representing that said preparation contains any substantial amount of olive oil.

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

ELECTROLYSIS ASSOCIATES, INC., AND LOUIS ZINBERG AS OFFICER THEREOF AND TRADING AS BEAUTIDERM COMPANY

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

Docket 4144. Complaint, May 28, 1940—Decision, Dec. 11, 1940

Where a corporation and an individual, who was its president, treasurer and majority stockholder and who, with office and principal place of business at same address, and trading as Beautiderm Co., formed, controlled, and directed its policies, acts, and practices, engaged in interstate sale and distribution of Beautiderm Midget device or apparatus which, recommended for use in the electrolytic removal of superfluous hair by individual self-application at home, was composed principally of an electric battery with two cords terminating respectively in an electrode, and in a needle, for insertion into hair follicle to destroy hair root by electrolysis; in advertisements of their said product which they disseminated and caused to be disseminated through the mails and through various other means in commerce, and otherwise, and through advertisements in newspapers and by circulars, leaflets, pamphlets, and other advertising literature, and which were intended and likely to induce purchase of said product, and acting in conjunction and cooperation with each other—

(*a*) Represented that their said Beautiderm Midget was an effective, efficient, safe, and scientific apparatus for electrolytic removal of superfluous hair from the body by individual self-application in the home, and that such removal was permanent, and that use of said device was painless and harmless, and would have no ill effects, facts being it was not an effective, efficient, and scientific apparatus for electrolytic removal of superfluous hair through individual self-application in the home, and would not accomplish results claimed by them, and was not safe, painless, and harmless when used by the unskilled lay public; and

(*b*) Failed to reveal that use of said device under conditions prescribed in said advertisements or such conditions as are customary or usual, by persons not trained in the technique of removing superfluous hair by electrolysis, might result in serious and irreparable injury to health or permanent disfigurement, including, among results aforesaid, skin burns, pitting and permanent disfigurement, and local infections which, under said circumstances, might cause serious injury to health and, following application to cancerous or syphilitic lesions, not recognizable as such by layman, might result fatally;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true, and of inducing portion of said public, because of such erroneous and mistaken belief, to purchase their said device or apparatus:

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. Irving Payson Zinbarg, 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 Electrolysis Associates, Inc., a corporation, and Louis Zinberg, as an officer of said corporation and as an individual trading as Beautiderm 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. Electrolysis Associates, Inc., is a corporation created, organized, and existing under and by virtue of the laws of the State of New York, with its office and principal place of business at 1451 Broadway, New York, N. Y. Louis Zinberg is an individual, trading as Beautiderm Company and is also president, treasurer and majority stockholder of Electrolysis Associates, Inc., with his office and principal place of business at the same address as said corporate respondent.

Respondent, Louis Zinberg, as an officer of said corporate respondent, formulates, controls, and directs the policies, acts, and practices of said corporate respondent. Said respondents act in conjunction and cooperation with each other in performing the acts and practices hereinafter alleged.

Par. 2. The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a certain device or apparatus designated as the Beautiderm Midget, recommended for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home.

In the course and conduct of their business, the respondents cause said device or apparatus when sold to be transported from their 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.

Respondents maintain and at all times mentioned herein, have maintained a course of trade in said device or apparatus 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 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 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, leaflets, pamphlets, and other advertising literature, are the following:

Don't say you can't afford electrolysis for the permanent removal of embarrassing hair on the face or legs. There's no excuse because now there's a new, small apparatus exactly like the larger ones professionals use with which you can permanently rid yourself of this handicap at home.

Electrolysis is permanent! You can remove this disfiguring hair yourself easily and safely with a little care and skill at home.

An inexpensive, easily operated apparatus for home use.

The convenience of having a treatment any time you want it right in your own room.

When you consider that you are giving yourself treatments that would cost you several hundred dollars if taken at a salon in a big city, the cost of your Beautiderm seems almost negligible. Easy to use.

How simple it is to insert the needle. It can be operated by amateurs without injury.

It does not require a person of experience to operate the machine.

Absolute safety assured.

The method of electrolysis is the one method advised by physicians as absolutely safe.

The Beautiderm Midget offers a safe and permanent method of removing superfluous hair.

No plan equals in permanence and safety the use of the electric needle.

The only means of permanently and safely removing superfluous hair is electrolysis.

If you would be free from the embarrassment of ugly, excess hair, remove it forever this safe, permanent, inexpensive way with a Beautiderm Midget.

No pitting or scarring of the skin or burning of the tissues result when the Beautiderm Midget removes hair.

Can't possibly cause serious injury in any way.

Those who are opposed to electrolysis on the assumption that the electric needle is dangerous are laboring under a misapprehension.

Electrolysis is absolutely painless.

The Beautiderm method of removing hair by electrolysis is absolutely harmless.

Electrolysis is a scientific effacer of disfiguring hair. An effective inexpensive apparatus.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondents represent that their device, designated as Beautiderm Midget, is an effective, efficient, safe, and scientific apparatus for the electrolytic removal of superfluous hair from the human body by individual self-application in the home; that the removal of said hair is permanent, that its use is painless and harmless and will have no ill effects upon the human body.

PAR. 5. In truth and in fact, the device or apparatus sold and distributed by the respondents as aforesaid, designated as Beautiderm Midget, is composed principally of an electric battery to which is attached two cords, one cord terminating in an electrode and the other cord terminating in a needle. The said needle is inserted into the hair follicle for the purpose of destroying the root of the hair by electrolysis, which process may cause serious injury to health. The said device is not an effective, efficient and scientific apparatus for the electrolytic removal of superfluous hair from the human body by individual self-application in the home. Said device will not accomplish the result claimed by the respondents and is not safe, painless, and harmless when used by the unskilled lay public.

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 device 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.

The use of said device under the conditions prescribed in said advertisements or under such conditions as are customary or usual, by persons not trained in the technique of removing superfluous hair from the human body by electrolysis, may result in serious or irreparable injury to health or permanent disfigurement.

Such use, as aforesaid, may result in local infections, erysipelas, skin burns, scarring, metallic tattoo marks, pitting and permanent disfigurement. When infection occurs in the nose, on the upper lip,

or over the glabella, it may be so serious as to cause serious injury to health, and in those instances where the device and method are applied to cancerous or syphilitic lesions, which are not recognizable as such by the layman, fatal consequences may result from infection.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to their device or apparatus, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said device or apparatus.

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 28, 1940, issued, and on May 29, 1940, served its complaint in this proceeding upon respondents, Electrolysis Associates, Inc., a corporation, and Louis Zinberg, as an officer of said corporation and as an individual trading as Beautiderm Company, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Electrolysis Associates, Inc., is a corporation created, organized, and existing under and by virtue of the laws of the State

of New York, with its office and principal place of business at 1451 Broadway, New York, N. Y. Louis Zinberg is an individual trading as Beautiderm Company and is also president, treasurer, and majority stockholder of Electrolysis Associates, Inc., with his office and principal place of business at the same address as said corporate respondent.

Respondent Louis Zinberg, as an officer of said corporate respondent, formulates, controls, and directs the policies, acts, and practices of said corporate respondent. Said respondents act in conjunction and cooperation with each other in performing the acts and practices hereinafter described.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a certain device or apparatus designated as the Beautiderm Midget, recommended for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home.

In the course and conduct of their business, the respondents cause said device or apparatus when sold to be transported from their 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.

Respondents maintain and at all times mentioned herein, have maintained a course of trade in said device or apparatus 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 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 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, leaflets, pamphlets, and other advertising literature, are the following:

Don't say you can't afford electrolysis for the permanent removal of embarrassing hair on the face or legs. There's no excuse because now there's a new, small apparatus exactly like the larger ones professionals use with which you can permanently rid yourself of this handicap at home.

Electrolysis is permanent! You can remove this disfiguring hair yourself easily and safely with a little care and skill at home.

An inexpensive, easily operated apparatus for home use.

The convenience of having a treatment any time you want it right in your own room.

When you consider that you are giving yourself treatments that would cost you several hundred dollars if taken at a salon in a big city, the cost of your Beautiderm seems almost negligible. Easy to use.

How simple it is to insert the needle. It can be operated by amateurs without injury.

It does not require a person of experience to operate the machine.

Absolute safety assured.

The method of electrolysis is the one method advised by physicians as absolutely safe.

The Beautiderm Midget offers a safe and permanent method of removing superfluous hair.

No plan equals in permanence and safety the use of the electric needle.

The only means of permanently and safely removing superfluous hair is electrolysis.

If you would be free from the embarrassment of ugly, excess hair, remove it forever this safe, permanent, inexpensive way with a Beautiderm Midget.

No pitting or scarring of the skin or burning of the tissues result when the Beautiderm Midget removes hair.

Can't possibly cause serious injury in any way.

Those who are opposed to electrolysis on the assumption that the electric needle is dangerous are laboring under a misapprehension.

Electrolysis is absolutely painless.

The Beautiderm method of removing hair by electrolysis is absolutely harmless.

Electrolysis is a scientific effacer of disfiguring hair. An effective inexpensive apparatus.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondents represent that their device, designated as Beautiderm Midget, is an effective, efficient, safe, and scientific apparatus for the electrolytic removal of superfluous hair from the human body by individual self-application in the home; that the removal of said hair is permanent, that the use of such device is painless and harmless and will have no ill effects upon the human body.

PAR. 5. In truth and in fact, the device or apparatus sold and distributed by the respondents as aforesaid, designated as Beautiderm Midget, is composed principally of an electric battery to which is attached two cords, one cord terminating in an electrode and the other cord terminating in a needle. The said needle is inserted into

the hair follicle for the purpose of destroying the root of the hair by electrolysis, which process may cause serious injury to health. The said device is not an effective, efficient, and scientific apparatus for the electrolytic removal of superfluous hair from the human body by individual self-application in the home. Said device will not accomplish the result claimed by the respondents and is not safe, painless, and harmless when used by the unskilled lay public.

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 device 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.

The use of said device under the conditions prescribed in said advertisements or under such conditions as are customary or usual, by persons not trained in the technique of removing superfluous hair from the human body by electrolysis, may result in serious or irreparable injury to health or permanent disfigurement.

Such use, as aforesaid, may result in local infections, erysipelas, skin burns, scarring, metallic tattoo marks, pitting, and permanent disfigurement. When infection occurs in the nose, on the upper lip or over the glabella, it may be so serious as to cause serious injury to health, and in those instances where the device and method are applied to cancerous or syphilitic lesions, which are not recognizable as such by the layman, fatal consequences may result from infection.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their device or apparatus, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true and induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said device or apparatus.

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, Electrolysis Associates, Inc., a corporation, and its officers, and Louis Zinberg, as an officer of said corporation and as an individual trading as Beautiderm Co., or trading under any other name or names, their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their device or apparatus designed for the electrolytic removal of hair and advertised as "Beautiderm Midget," or of any other device or apparatus of substantially similar composition or construction, 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 (*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 such device or apparatus is an effective, efficient, and scientific apparatus for the electrolytic removal of superfluous hair from the human body by individual self-application in the home; that its use is painless, safe, and harmless and will have no ill effects upon the human body when used by the unskilled lay public; or that the removal of said hair is permanent; or which advertisements fail to reveal that the use of said device or apparatus by persons not trained in the technique of removing superfluous hair from the human body by electrolysis may result in permanent disfigurement, or cause infections or other 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 such device or apparatus, which advertisements contain any of the representations prohibited in paragraph 1 hereof or which fail to reveal that the use of said device or apparatus by persons not trained in the technique of

removing superfluous hair from the human body by electrolysis may result in permanent disfigurement or cause infections or other irreparable injury to health.

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

Syllabus

IN THE MATTER OF

CHARLES H. PHILLIPS 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 3959. Complaint, Nov. 27, 1939—Decision, Dec. 12, 1940

Where a corporation engaged in manufacturing and compounding its "Milk of Magnesia Cleansing Cream" and its "Milk of Magnesia Texture Cream," and in interstate sale and distribution thereof; in advertisements of said products which it disseminated and caused to be disseminated through the mails and otherwise in commerce, and by other means, and by insertions in newspapers and periodicals of general circulation, and in circulars and other printed or written matter distributed in commerce, and by continuities broadcast from radio stations of extrastate audience, and which were intended and likely to induce purchase of its said products—

(*a*) Represented, directly and by implication, that there is a disease or abnormal pathological condition of the skin known or properly described as "acid skin," and that skin blemishes such as blackheads, enlarged pores, oily shine and dry, scaly roughness are caused by "acid skin" or excess fatty acid accumulations, and that use of either or both of said products would cure or overcome such conditions and effects, and were effective in treating same; and

(*b*) Represented that use of either or both of its said products neutralized external excess fatty acid accumulations in the same way that milk of magnesia neutralizes excess acid in the stomach, and that use of its "Texture Cream" improved texture of skin and freed same from oiliness, and that its "Cleansing Cream" penetrated pores of skin and thoroughly cleansed same;

Facts being that acid neutralization of skin is not accomplished in same way as above set forth and is not necessary to maintenance of a healthy skin condition, there is no such disease or abnormal condition, as above set forth, as "acid skin," nor will its said products, whether used singly or jointly, cure or overcome such purported condition, skin blemishes such as blackheads and others above set forth are not caused by "acid skin" or excess fatty acid accumulations thereon, and its said products, whether used singly or jointly, will not cure or overcome such blemishes or have any value in treatment thereof or affect roughness, blackheads, excess or accumulated oil, or enlarged pore openings in excess of (*a*) temporarily relieving roughness of skin due solely to dryness, (*b*) aiding in removal of blackheads, by removing accumulated dirt, foreign matter, or skin excretions lodged in exterior openings of pores or present on surface, (*c*) temporarily removing oily shine by removing excess or accumulated oil, and (*d*) aiding in reduction of enlarged pore openings when caused solely by accumulated dirt, foreign matter or skin excretions lodged in exterior openings of pores, and its said "Texture Cream" does not change or affect texture of skin in histological sense, or free it from oiliness, though of possible value in temporarily removing excess or accumulated oil, and its "Cleansing Cream" will not penetrate pores or thoroughly clean skin, except as it acts upon dirt and other foreign matter possibly present on surface and in exterior openings of pores;

With effect, through use of aforesaid statements, representations, and designations, of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such designations, statements, and representations were true, and into purchase of substantial quantities of its said products by reason thereof:

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

Mr. Donovan R. Divet 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 Charles H. Phillips Chemical Co., a corporation, hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. The respondent Charles H. Phillips Chemical Co. is a corporation organized and existing under and by virtue of the laws of the State of Connecticut and having its office and principal place of business at 170 Varick Street, in the city of New York, State of New York, and having a factory, where the products hereinafter referred to are manufactured, at Glen Brook, in the State of Connecticut.

Respondent is now, and for several years last past has been, engaged in the business of manufacturing, compounding, selling and distributing two cosmetic preparations designated Phillips' Milk of Magnesia Cleansing Cream and Phillips' Milk of Magnesia Texture Cream. The respondent causes said cosmetic preparations, when sold, to be shipped from its said factory in the State of Connecticut, or from the State of origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States other than the State of origin of the shipment thereof and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said cosmetic preparations in commerce among and between the various States of the United States and in the District of Columbia.

Par. 2. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating and has caused, and is now causing, the dissemination of false advertisements con-

cerning its said preparations by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which such broadcasts originate and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparations; and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning its said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparations in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid, are the following:

If your skin seems "acid," if it has lost its fresh tone, smooth firm texture, and has developed such blemishes as enlarged pores, oily shine, blackheads, scaly roughness, then try the beauty-giving action of these Milk of Magnesia Creams on your skin!

The beneficial action of Milk of Magnesia on the skin has long been known to many skin specialists * * *. Now, after years of laboratory experiment and tests, the Phillips Company, original makers of the famous Milk of Magnesia, has perfected a way to hold this beauty-giving ingredient on the skin long enough to be truly helpful—in these new-type face creams!

Help overcome "acid skin". You know how Milk of Magnesia taken internally relieves excess acidity of the stomach. In just the same way these new-type Milk of Magnesia Creams act externally on the excess fatty acid accumulations on the skin, and help to overcome unsightly faults and aid in beautifying.

Phillips' Milk of Magnesia Texture Cream. Its difference is due to the Milk of Magnesia which acts on the excess fatty acid accumulations on the skin * * * The Milk of Magnesia prepares the skin—smoothing away roughness and freeing it from oiliness, * * *

It gives a new kind of aid in protecting against the mixture of dirt and natural oils which furnishes a fertile soil for bacteria.

Phillips' Milk of Magnesia Cleansing Cream. The Milk of Magnesia not only loosens and absorbs the surface dirt, but penetrates the pores and neutralizes the excess fatty acid accumulations, leaving your skin soft, smooth and thoroughly clean.

In said advertisements and as a part of its representations concerning said preparations, the respondent designates its said prepa-

rations as Phillips' Milk of Magnesia Texture Cream and Phillips' Milk of Magnesia Cleansing Cream.

PAR. 3. Through the use of the aforesaid statements and representations and other statements and representations of similar import or meaning not herein set out, the respondent represents, directly or by implication, that there is a disease or abnormal pathological condition of the human skin known or properly described as "acid skin" and that the use of either or both of said preparations, to wit, Phillips' Milk of Magnesia Texture Cream and Phillips' Milk of Magnesia Cleansing Cream, will cure or overcome such condition; that skin blemishes such as blackheads, enlarged pores, oily shine and dry, scaly roughness are caused by "acid skin" and that the use of either or both of said preparations will cure or overcome such conditions, and that said preparations are effective in treating such conditions; that excess fatty acid accumulations on the skin cause blemishes thereon and that the use of either or both of said preparations neutralizes external excess fatty acid accumulations in the same way that milk of magnesia neutralizes excess acid in the stomach; that the use of said Milk of Magnesia Texture Cream improves the texture of the skin and frees the skin from oiliness; and that Milk of Magnesia Cleansing Cream penetrates the pores of the skin and thoroughly cleans the skin.

PAR. 4. The aforesaid statements and representations and designations by respondent relative to said cosmetic preparations, to-wit, Phillips' Milk of Magnesia Texture Cream and Phillips' Milk of Magnesia Cleansing Cream, are exaggerated, misleading, and untrue and constitute false advertisements. In truth and in fact, there is no disease or abnormal pathological condition of the human skin known or properly described as "acid skin" and consequently neither one nor both of said preparations will cure or overcome such purported condition. In fact, the healthy and normal human skin and its exudations are slightly acid. Skin blemishes such as blackheads, enlarged pores, oily shine or dry scaly roughness are not caused by "acid skin" and neither one nor both of the aforesaid preparations will cure or overcome any of such conditions or be effective in the treatment thereof. Excess fatty acid accumulations do not cause blemishes on the skin. Neither the use of one nor the use of both of the aforesaid preparations neutralizes fatty acids on the skin in the same way that milk of magnesia neutralizes excess acid in the stomach. The quantity of fatty acid on the skin of the normal person is very small, and neither of the aforesaid preparations will neutralize fatty acids so as to accomplish the results represented. The use of Milk of Magnesia Texture Cream does not improve the

texture of the skin or free the skin from oiliness. In fact, such preparation contains a substantial quantity of oil, and the use thereof would add to the oil on the skin. The aforesaid Milk of Magnesia Cleansing Cream will not penetrate the pores of the skin and will not thoroughly clean the skin.

PAR. 5. A substantial number of members of the purchasing public have the understanding and belief that milk of magnesia has therapeutic value in the treatment of various diseases and disorders of the human body, but a substantial number of such members of the purchasing public are uninformed as to the limitations of the therapeutic value of milk of magnesia.

The respondent's use of the words "Milk of Magnesia" in the names of the products designated as Phillips' Milk of Magnesia Texture Cream and Phillips' Milk of Magnesia Cleansing Cream has the capacity and tendency to, and does, cause members of the purchasing public who are uninformed as to the limitations of the therapeutic value of milk of magnesia, to have the mistaken and erroneous belief that, for the purposes for which respondent recommends the use of said preparations, milk of magnesia is the principal active ingredient in said preparations; that milk of magnesia has therapeutic value in the treatment of the conditions for which respondent recommends the use of its said preparations, to wit: "acid skin," skin blemishes, enlarged pores, oily shine, dry scaly roughness, and excess fatty acid accumulations, and that milk of magnesia will penetrate and thoroughly cleanse the pores and skin and will improve the texture of the human skin.

Milk of magnesia has no therapeutic value in the treatment of the conditions for which respondent recommends the use of its said preparations, to-wit: "acid skin," skin blemishes, enlarged pores, oily shine, dry scaly roughness, or excess fatty acid accumulations. Milk of magnesia is not an active ingredient in either of said preparations in aiding to accomplish the results for which respondent recommends the use of said preparations as aforesaid. Milk of magnesia will not penetrate or cleanse the pores of the skin and the use thereof will not improve the texture of the human skin.

PAR. 6. The use by the respondent of the aforesaid false and misleading statements, representations, and designations has the capacity and tendency to, and does, mislead and deceive a substantial number of the members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading designations, statements, and representations are true and into the purchase of substantial quantities of respondent's said products because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 27th day of November 1939 issued and subsequently served its complaint in this proceeding upon said respondent, Charles H. Phillips Chemical Co., a corporation, charging it with unfair and deceptive acts and practices in commerce in violation of the provisions of the 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 through its 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 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, Charles H. Phillips Chemical Co., is a corporation organized and existing under and by virtue of the laws of the State of Connecticut and having its office and principal place of business at 170 Varick Street, in the city of New York, State of New York, and having a factory, where the products hereinafter referred to are manufactured, at Glenbrook, in the State of Connecticut.

Respondent is now, and for several years last past has been, engaged in the business of manufacturing, compounding, selling,

and distributing two cosmetic preparations designated Phillips' Milk of Magnesia Cleansing Cream and Phillips' Milk of Magnesia Texture Cream. The respondent causes said cosmetic preparations, when sold, to be shipped from its said factory in the State of Connecticut, or from the State of origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States other than the State of origin of the shipment thereof and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said cosmetic preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning its said preparations by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which such broadcasts originate and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said preparations; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning its said preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparations in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

If your skin seems "acid," if it has lost its fresh tone, smooth firm texture, and has developed such blemishes as enlarged pores, oily shine, blackheads, scaly roughness, then try the beauty-giving action of these Milk of Magnesia Creams on your skin!

The beneficial action of Milk of Magnesia on the skin has long been known to many skin specialists * * *. Now, after years of laboratory experiment and tests, the Phillips Company, original makers of the famous Milk of Magnesia, has perfected a way to hold this beauty-giving ingredient on the skin long enough to be truly helpful—in these new-type face creams!

Help overcome "acid skin". You know how Milk of Magnesia taken internally relieves excess acidity of the stomach. In just the same way these

new-type Milk of Magnesia Creams act externally on the excess fatty acid accumulations on the skin, and help to overcome unsightly faults and aid in beautifying.

Phillips' Milk of Magnesia Texture Cream. Its difference is due to the Milk of Magnesia which acts on the excess fatty acid accumulations on the skin * * * The Milk of Magnesia prepares the skin—smoothing away roughness and freeing it from oiliness * * *.

It gives a new kind of aid in protecting against the mixture of dirt and natural oils which furnishes a fertile soil for bacteria.

Phillips' Milk of Magnesia Cleansing Cream. The Milk of Magnesia not only loosens and absorbs the surface dirt, but penetrates the pores and neutralizes the excess fatty acid accumulations, leaving your skin soft, smooth and thoroughly clean.

PAR. 3. Through the use of the aforesaid statements and representations, and other statements and representations of similar import or meaning not herein set out, the respondent represents, directly and by implication, that there is a disease or abnormal pathological condition of the human skin known or properly described as "acid skin," and that the use of either or both of said preparations, to wit, Phillips' Milk of Magnesia Texture Cream and Phillips' Milk of Magnesia Cleansing Cream, will cure or overcome such condition; that skin blemishes such as blackheads, enlarged pores, oily shine and dry, scaly roughness are caused by "acid skin" or excess fatty acid accumulations, and that the use of either or both of said preparations will cure or overcome such conditions, and that said preparations are effective in treating such conditions; that the use of either or both of said preparations neutralizes external excess fatty acid accumulations in the same way that milk of magnesia neutralizes excess acid in the stomach; that the use of said Phillips' Milk of Magnesia Texture Cream improves the texture of the skin and frees the skin from oiliness; and that Phillips' Milk of Magnesia Cleansing Cream penetrates the pores of the skin and thoroughly cleans the skin.

PAR. 4. The respondent's aforesaid statements and representations relative to said cosmetic preparations, Phillips' Milk of Magnesia Texture Cream and Phillips' Milk of Magnesia Cleansing Cream, and the effectiveness of said products in use, are exaggerated, misleading and untrue, and constitute false advertisements. The healthy and normal skin and its exudations are slightly acid and, although such acid may be neutralized by external applications of either or both of said preparations, such neutralization is not accomplished in the same way as milk of magnesia neutralizes excess acid in the stomach, and such neutralization is not necessary to the maintenance of a healthy skin condition. There is no disease or abnormal pathological condition of the human skin known or properly described as

"acid skin." Neither of respondent's preparations, whether used singly or jointly, will cure or overcome such purported condition. Skin blemishes such as blackheads, enlarged pores, oily shine, and dry scaly roughness are not caused by "acid skin" or by excess fatty acid accumulations on the skin. Neither of the aforesaid preparations, whether used singly or jointly, will cure or overcome such skin blemishes or have any value in the treatment thereof in excess of (*a*) temporarily relieving roughness of the skin due solely to dryness thereof; (*b*) aiding in the removal of blackheads, by removing accumulated dirt, foreign matter, or skin excretions lodged in exterior openings of the pores or present on the surface of the skin; (*c*) temporarily removing oily shine by removing from the surface of the skin excess or accumulated oil; (*d*) aiding in the reduction of enlarged pore openings when such enlarged pore openings are caused solely by accumulated dirt, foreign matter or skin excretions lodged in the exterior openings of the pores. The use of either or both of said preparations will not affect roughness of the skin, blackheads, excess or accumulated oil on the skin, oily shine, or enlarged pore openings, except as indicated in subdivisions (*a*), (*b*), (*c*), and (*d*) of paragraph 4 of these findings.

The use of Phillips' Milk of Magnesia Texture Cream does not change or affect the texture of the skin in the histological sense, or free the skin from oiliness, though such preparation may have value in temporarily removing excess or accumulated oil.

Phillips' Milk of Magnesia Cleansing Cream will not penetrate the pores of the skin and will not thoroughly clean the skin except as it acts upon the dirt and other foreign matter which may be present on the surface of the skin and in the exterior openings of the pores.

PAR. 5. The use by the respondent of the aforesaid statements, representations and designations has the capacity and tendency to, and does, mislead and deceive a substantial number of the members of the purchasing public into the erroneous and mistaken belief that the aforesaid designations, statements and representations are true, and into the purchase of substantial quantities of respondent's said products because of said erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, 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, Charles H. Phillips Chemical Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its cosmetic preparations designated Phillips' Milk of Magnesia Cleansing Cream and Phillips' Milk of Magnesia Texture Cream, or either of them, or any preparations of substantially similar composition 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:

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 advertisement represents, directly or through inference:

1. That there is a disease or abnormal pathological condition of the human skin known or properly described as "acid skin;"

2. That the use of either or both of said preparations will cure or overcome said purported condition described as "acid skin."

3. That skin blemishes, blackheads, enlarged pores, oily shine or dry, scaly roughness, are caused by "acid skin" or by any other fictitious or non-existent disease or pathological condition, or by excess fatty acid accumulations on the skin.

4. That the use of either or both of said preparations will cure or overcome skin blemishes, or will be effective in the treatment of skin blemishes except as provided in paragraphs 5, 6, 7, and 8 hereof.

5. That the use of either or both of said preparations has any value in the treatment of roughness of the skin in excess of temporarily relieving such roughness when due solely to dryness of the skin.

6. That the use of either or both of said preparations will remove blackheads or has any value in the removal thereof in excess of aiding in such removal by removing accumulated dirt, foreign matter, or

skin excretions lodged in the exterior openings of the pores or present on the surface of the skin.

7. That the use of either or both of said preparations reduces enlarged pore openings or is of any value in the treatment thereof in excess of aiding in the reduction of enlarged pore openings when said enlargement is caused solely by accumulated dirt, foreign matter or skin excretions lodged in the exterior openings of the pores.

8. That the use of either or both of said preparations overcomes oily shine or oiliness of the face or is of any value in the treatment of oily shine or oiliness of the face in excess of temporarily removing excess or accumulated oil from the surface of the skin.

9. That the use of either or both of said preparations neutralizes excess fatty acid or other acid accumulations on the skin in the same way that milk of magnesia neutralizes acid in the stomach, or that the neutralization of a normal fatty acid or other acid accumulation on the skin is necessary to the maintenance of a healthy skin condition.

10. That said preparations or either of them change or affect the texture of the skin.

11. That the use of said Phillips' Milk of Magnesia Cleansing Cream or any other product of substantially similar ingredients penetrates the pores of the skin; or thoroughly cleans the skin except as it acts upon dirt or other matter which may be present on the surface of the skin or in the exterior openings of the pores of 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 said preparations, or either of them, which advertisement contains any of the representations prohibited in Subdivision A 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

SAMUEL H. KOOLISH TRADING AS ARLINGTON 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 4180. Complaint, July 11, 1940—Decision, Dec. 12, 1940

Where an individual engaged in interstate sale and distribution of radios, flashlights, clocks, cameras, pen and pencil sets, and other articles of merchandise in competition with others engaged in sale and distribution of like or similar articles in commerce as aforesaid; in soliciting sale of and distributing his merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes when merchandise was sold and distributed to ultimate consumer thereof, and involved distribution to operators and purchasing public of certain literature and instructions including 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 under various push-card schemes including (*a*) scheme through which, and in accordance with explanatory legend set forth on card, purchaser or customer succeeding in selecting by chance that 1 of 15 feminine names displayed thereon corresponding with name concealed under card's master seal secured candid camera and roll of film, or article of merchandise being thus disposed of, and customer securing certain specified number received pen and pencil combination, and amount paid for chance was determined by number secured by chance under disk pushed on card in accordance with name selected, and (*b*) other push-card schemes which involved sale and distribution of his said products by means of game of chance, gift enterprise, or lottery scheme similar to that hereinabove described and varying therefrom in detail only; and

Supplied thereby to and placed in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with such sales plan by persons to whom he furnished said push cards and who used same in purchasing, selling, and distributing his said products in accordance with such plan, under which fact as to whether purchaser received an article of merchandise or nothing, and amount of money and how much he was to pay, and which of said articles if any he was to receive, were determined wholly by lot or chance, and involving game of chance or sale of a chance to procure one of said articles at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by sales plan or method employed by him in sale and distribution of his said merchandise, and by element of

chance involved therein, and were thereby induced to buy and sell his said products in preference to those offered for sale by his said competitors, who do not use same or equivalent method, and with effect, through use of said method and because of said game of chance, of unfairly diverting trade in commerce to him from his competitors aforesaid, who do not use such or equivalent method; to the substantial injury of competition in commerce:

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.

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 Samuel H. Koolish, individually and trading as Arlington 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 Samuel H. Koolish is an individual trading as Arlington Sales Co. with his principal office and place of business located at 210 West 8th Street, Kansas City, Mo. The respondent is now, and for more than 8 months last past has been, engaged in the sale and distribution of radios, flashlights, clocks, 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 Missouri to purchasers thereof, at their respective points of location, in the various States of the United States other than Missouri and in the District of Columbia. There is now and has been for more than 8 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 operaiton 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 received 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 facts 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, are 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 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 July 11, 1940, issued and thereafter served its complaint in this proceeding upon said respondent Samuel H. Koolish, individually and trading as Arlington 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 in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for 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. Respondent's counsel also waived the filing of a trial examiner's report upon the evidence.

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

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent Samuel H. Koolish is an individual trading as Arlington Sales Co. with his principal office and place of business located at 210 West 8th Street, Kansas City, Mo. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of radios, flashlights, clocks, 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 Missouri to purchasers thereof at their respective points of location, in the various

States of the United States other than Missouri 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 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 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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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 facts as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, how much money he is to pay, and which of said articles of merchandise the purchaser is to receive, if any, are 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, and have used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said 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. 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 (respondent having filed no answer thereto), and a stipulation as to the facts entered into between counsel for 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 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 Samuel H. Koolish, individually and trading as Arlington 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, flashlights, clocks, cameras, 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, push or pull cards, punchboards, or other lottery devices which are to be used or may be used in the sale and distribution of any 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, push or pull cards, punchboards, or other devices so prepared or printed that said push or pull cards, punchboards, or other devices are to be used or may be used to sell or distribute any 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 device.

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

IN THE MATTER OF

CRAZY WATER COMPANY ET AL.

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

Docket 4314. Complaint, Sept. 13, 1940—Decision, Dec. 12, 1940

Where a corporation, and four individuals who were, as the case might be, chairman of its board and general officers thereof and controlled its policies and practices, engaged in interstate sale and distribution of certain mineral waters and derivatives thereof under trade designations "Crazy Mineral Water," "Crazy Water Crystals," and "Crazy Fiz"; in substantial competition in commerce with others engaged in sale and distribution of other products used and useful for same purposes for which they recommended their said mineral waters and derivatives, and acting in conjunction and cooperation with each other; in advertisements which they disseminated and caused to be disseminated through the mails and through newspapers, circulars, pamphlets, leaflets and periodicals having general circulation, and in other printed or written matter distributed in commerce among the various States, and through continuities broadcast from radio stations of extra-State audience, and by various other means, and including testimonials or purported testimonial letters, or quotations therefrom, and which advertisements were intended and likely to induce purchase of their mineral waters and derivatives—

Represented, directly and indirectly, that constipation and "faulty elimination" were the cause of and associated with a long list of diseases, ailments, afflictions, and conditions, which they enumerated, and which included, among numerous others thus set forth, diseases of alimentary tract, such as intestinal stasis, chronic constipation, nervous indigestion, urticaria, conditions involving urinary tract, kidneys and gall duct, cystitis, urethritis, cirrhosis of the liver, diabetes mellitus, gravel and calculous concretion in the bladder and gall duct, fevers, toxic conditions, typhoid, influenza, jaundice, Bright's disease, rheumatism, arthritis, neuritis, high blood pressure, acidosis and various others, and that their said mineral waters and derivatives possessed beneficial, therapeutic properties with respect to curing or remedying and competently and effectively treating constipation and "faulty elimination," and, therefore, the diseases, ailments, afflictions and conditions above set forth;

Facts being that said mineral waters and derivatives possessed no therapeutic properties in excess of those of a cathartic or laxative, plus tendency temporarily to neutralize excess gastric acidity, and served no other purpose than to assist in temporary evacuation of intestinal tract and to tend temporarily to neutralize excess gastric acidity, use of said mineral waters and derivatives thereof for certain of said diseases, including those of alimentary tract, such as intestinal stasis, chronic constipation, nervous indigestion, conditions involving urinary tract, kidneys and gall duct, cystitis, urethritis and gastro-intestinal disturbances, and for biliousness, backaches, headaches, nervousness, run-down condition, insomnia, loss of appetite and lack of energy, was

limited to such temporary relief as might result from temporary evacuation of intestinal tract and tendency temporarily to neutralize excess gastric acidity, when said diseases, ailments, afflictions and conditions were caused by, associated with, due to, or persisted because of excess gastric acidity or constipation, and said waters and derivatives would be of no beneficial or therapeutic value in treatment of, serve as remedies or cures for such diseases, ailments, afflictions and conditions, when not thus caused or associated, and they would not in any way effect any tendency to excess gastric acidity or constipation, and possessed no beneficial therapeutic properties whatsoever in treatment of various other diseases, ailments, afflictions, and conditions named and set-out by them in their advertisements aforesaid and including among others, cirrhosis of the liver, diabetes mellitus, gravel and calculous concretion in the bladder and gall duct, nephritis, Bright's disease, kidney trouble, obesity, rheumatism, arthritis, neuritis, high blood pressure, acidosis, and other disease, ailments, afflictions and conditions not caused by or associated with, and which do not persist because of excess gastric acidity or constipation;

With effect of misleading and deceiving substantial portion of purchasing public into mistaken and erroneous belief that such false advertisements were true and, as result of such belief thus engendered, inducing substantial portion of said public to purchase their said mineral waters and derivatives thereof, and thereby divert trade to themselves from their competitors who do not use such acts, practices and methods employed by them; to the substantial injury of said competitors in said commerce, and to the injury 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 in commerce and unfair and deceptive acts and practices therein.

Mr. Maurice C. Pearce for the Commission.

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 Crazy Water Co., a corporation, Carr P. Collins, individually and as chairman of the board of Crazy Water Co., H. H. Collins, individually and as president of Crazy Water Co., W. W. Woodall, individually and as secretary of Crazy Water Co., and J. A. Pondrom, individually and as treasurer of Crazy Water 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:

[1] An extended enumeration in paragraph 4 of the complaint, quoting respondents' representations, direct and indirect, and through direct statements and quoted statements in testimonial letters purporting to come from customers, which also appears in the findings, infra, at pp. 115–117, is omitted from the complaint as published.

PARAGRAPH 1. Respondent Crazy Water Co. is a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business located in Mineral Wells, Tex.

Carr P. Collins, chairman of the board of Crazy Water Co., H. H. Collins, president of Crazy Water Co., W. W. Woodall, secretary of Crazy Water Co., and J. A. Pondrom, treasurer of Crazy Water Co., are individuals with their offices and principal places of business located in Mineral Wells, Tex. These individual respondents control and have controlled the policies and practices of the corporate respondent, and they and the corporate respondent act in conjunction and cooperation with each other in the doing of the acts and practices hereinafter alleged.

Respondents, acting in conjunction and cooperation with each other, are now, and for several years last past have been, engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of certain mineral waters and derivatives thereof under the trade designations "Crazy Mineral Water," "Crazy Water Crystals," and "Crazy Fiz," recommended as a treatment for certain ailments of the human body.

Respondents cause said mineral waters and derivatives thereof under the trade designations "Crazy Mineral Water," "Crazy Water Crystals," and "Crazy Fiz," when sold, to be transported from their place of business in the State of Texas to the purchasers thereof located in the 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 mineral waters and derivatives thereof under the said trade designations 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 aforesaid, the respondents have been and are in substantial competition in commerce between and among the said several States of the United States and in the District of Columbia, with corporations, associations, partnerships, and individuals who are engaged in the sale and distribution of other products used and useful for the same purposes for which respondents recommend their said mineral waters and derivatives.

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 mineral waters and derivatives thereof by

United States mails, by insertion in newspapers, circulars, pamphlets, leaflets, and periodicals having a general circulation and also in other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to and do carry the programs emanating therefrom to listeners located in the various States of the United States other than the State in which said broadcasts originate; and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said mineral waters and derivatives therefrom; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

In said representations disseminated as aforesaid, respondents falsely represent and imply that said mineral waters and derivatives thereof will cure or are beneficial in the treatment of many of the diseases, ailments, afflictions, and conditions which may be present or exist in the human body. Among the diseases, ailments, afflictions, and conditions named by the respondents as diseases, ailments, afflictions, and conditions which their said mineral waters and derivatives thereof will cure, or are beneficial in the treatment of, are the following: Diseases of the alimentary tract, such as intestinal stasis, chronic constipation, mucous colitis, nervous indigestion, urticaria; conditions involving the urinary tract, kidneys and gall duct, cystitis, urethritis, cirrhosis of the liver, chronic metritis, parametritic exudations; diabetes mellitus, arthritis, acidosis, gravel and calculous concretion in the bladder and gall duct, fevers, toxic conditions, both local and generalized, such as rheumatism, typhoid, infection of numerous types, influenza, gastro-intestinal disturbances, anaphylaxis, nephritis, pyelitis, catarrhal jaundice, cholecystitis, gout, Bright's disease, kidney trouble, obesity; and irregularities of liver, gall duct and bladder.

In truth and in fact, the use of respondents' said mineral waters and derivatives thereof, whether by drinking or external application, will not cure, nor are they beneficial in the treatment of all, or any of, the diseases, ailments, afflictions and conditions above set out.

PAR. 4. Among and typical of the false statements and representations contained in said advertisements, either by direct statements by respondents or by quoting statements contained in testimonial letters

purporting to come from customers, disseminated and caused to be disseminated as aforesaid, are the following:[2]

PAR. 5. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of their mineral waters and derivatives thereof, the respondents have represented and do now represent, directly and indirectly, that constipation and "faulty elimination" are the cause of and associated with the following, among other, diseases, ailments, afflictions, and conditions: Diseases of the alimentary tract, such as intestinal stasis, chronic constipation, mucous colitis, nervous indigestion, urticaria; conditions involving the urinary tract, kidneys and gall duct, cystitis, urethritis, cirrhosis of the liver, chronic metritis, parametritic exudations; diabetes mellitus, gravel and calculous concretion in the bladder and gall duct; fevers, toxic conditions, typhoid, influenza, gastrointestinal disturbances, anaphylaxis, nephritis, pyelitis, catarrhal jaundice, cholecystitis, Bright's disease, kidney trouble, obesity, irregularities of the liver, gall duct and bladder, rheumatism, arthritis, neuritis, upset stomach, biliousness, backaches, headaches, high blood pressure, acidosis, lumbago, gout, nervousness, poisonous system, affected vision, colds, scarlet fever, rundown condition, insomnia, loss of appetite, lack of energy, aching joints, numbness of limbs; and that said mineral waters and the derivatives thereof possess beneficial, therapeutic properties with respect to curing or remedying and competently and effectively treating constipation and "faulty elimination" and therefore the diseases, ailments, afflictions and conditions hereinabove set forth.

PAR. 6. The aforesaid representations are grossly exaggerated, false and misleading. In truth and in fact, respondents' mineral waters and derivatives thereof possess no therapeutic properties in excess of those of a cathartic or laxative and serve no purpose other than to assist in the temporary evacuation of the intestinal tract. The diseases, ailments, afflictions, and conditions set out in paragraph 5 are not necessarily due to and do not generally persist because of constipation or "faulty elimination." The use of said mineral waters and the derivatives thereof will not serve as a remedy or cure for or eliminate or in any way effect any tendency to constipation. It has no beneficial value in overcoming or effectively treating the specific diseases, ailments, afflictions, and conditions set forth in

[2] The quoted matter set forth at length in the complaint at this point, as purportedly descriptive of the remedial, curative and therapeutic properties of respondents mineral waters and derivatives thereof, is also set forth in the findings, infra, at pp. 115–117, and for that reason is here omitted in the interest of brevity.

paragraph 5 hereof or in treating the same other than to the extent they may be temporarily relieved by the evacuation of the intestinal tract when they are due to, or persist because of, constipation. When such diseases, ailments, afflictions and conditions are due to causes other than constipation, said mineral waters and derivatives thereof will be of no beneficial or therapeutic value in the treatment thereof.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading advertisements with respect to their said mineral waters and the derivatives thereof, 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 advertisements are true, and as a result of such erroneous and mistaken belief, engendered as aforesaid, has a tendency to induce and has induced a substantial portion of the purchasing public to purchase respondents' said mineral waters and derivatives thereof, thereby diverting trade to the respondents from their competitors who do not use the acts, practices and methods used by respondents, to the substantial injury of said competitors in said commerce, and to the injury of the public.

PAR. 8. The aforesaid acts and practices of the respondents, as hereinabove alleged, are all to the prejudice of the public and the respondents' said competitors and constitute unfair methods of competition in commerce 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 September 1940, issued and thereafter served its complaint in this proceeding upon said respondents, Crazy Water Co., a corporation, Carr P. Collins, individually and as chairman of the board of Crazy Water Co., H. H. Collins, individually and as president of Crazy Water Co., W. M. Woodall, individually and as secretary of Crazy Water Co., and J. A. Pondrom, individually and as treasurer of Crazy Water 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. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this

proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto and that the said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint 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 Crazy Water Co. is a corporation duly chartered, organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business located in Mineral Wells, Tex.

Carr P. Collins, chairman of the board of Crazy Water Co., H. H. Collins, president of Crazy Water Co., W. M. Woodall, secretary of Crazy Water Co., and J. A. Pondrom, treasurer of Crazy Water Co., are individuals with their offices and principal places of business located in Mineral Wells, Tex. These individual respondents control and have controlled the policies and practices of the corporate respondent, and they and the corporate respondent act in conjunction and cooperation with each other in doing the acts and practices hereinafter set forth.

Respondents, acting in conjunction and cooperation with each other, are now, and for several years last past have been, engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of certain mineral waters and derivatives thereof under the trade designations "Crazy Mineral Water," "Crazy Water Crystals," and "Crazy Fiz," recommended as a treatment for certain ailments of the human body.

Respondents cause said mineral waters and derivatives thereof under the trade designations "Crazy Mineral Water," "Crazy Water Crystals," and "Crazy Fiz" when sold, to be transported from their place of business in the State of Texas to the purchasers thereof located in the 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 mineral

waters and derivatives thereof under the said trade designations 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, the respondents have been and are in substantial competition in commerce between and among the several States of the United States and in the District of Columbia, with corporations, associations, partnerships, and individuals who are engaged in the sale and distribution of other products used and useful for the same purposes for which respondents recommend their said mineral waters and derivatives.

PAR. 3. In the course and conduct of their business the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their mineral waters and derivatives thereof by United States mails, by insertion in newspapers, circulars, pamphlets, leaflets, and periodicals having a general circulation and also in other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to and do carry the programs emanating therefrom to listeners located in the various States of the United States other than the State in which said broadcasts originate; and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their mineral waters and derivatives therefrom; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their products by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their products in commerce as "commerce" is defined in the Federal Trade Commission Act.

In said representations disseminated as aforesaid, respondents falsely represent and imply that said mineral waters and derivatives thereof will cure or are beneficial in the treatment of many of the diseases, ailments, afflictions and conditions which may be present or exist in the human body. Among the diseases, ailments, afflictions, and conditions named by the respondents as diseases, ailments, afflictions, and conditions which their mineral waters and derivatives thereof will cure, or are beneficial in the treatment of, are the following: Diseases of the alimentary tract, such as intestinal stasis, chronic constipation, mucous colitis, nervous indigestion, urticaria, conditions involving the urinary tract, kidneys and gall duct, cystitis,

urethritis, cirrhosis of the liver, chronic metritis, parametritic exudations, diabetes mellitus, arthritis, acidosis, gravel and calculous concretion in the bladder and gall duct, fevers, toxic conditions, both local and generalized, such as rheumatism, typhoid, infection of numerous types, influenza, gastro-intestinal disturbances, anaphylaxis, nephritis, pyelitis, catarrhal jaundice, cholecystitis, gout, Bright's disease, kidney trouble, obesity; and irregularities of liver, gall duct and bladder.

In truth and in fact, the use of respondents' mineral waters and derivatives thereof, whether by drinking or external application, will not cure, nor are they beneficial in the treatment of all, or any of, the diseases, ailments, afflictions and conditions above set-out, except as set forth in paragraph 6 hereof.

PAR. 4. Among and typical of the false statements and representations contained in said advertisements, either by direct statements of respondents or by quoting statements contained in testimonial letters purporting to come from customers, disseminated and caused to be disseminated as aforesaid, are the following:

CRAZY WATER IS UNCONDITIONALLY GUARANTEED.

Every buyer of a bottle of Crazy Water makes their own terms: we unconditionally guarantee our product to produce certain positive results and if in any way you are dissatisfied—and you alone are the judge, our distributors are authorized to make a refund to you in full without question—you must be pleased.

CRAZY CRYSTALS ARE UNCONDITIONALLY GUARANTEED.

* * * the results will equal those obtained in the various diseases in which the natural Crazy Mineral Waters have long been employed.

A natural product.

If you suffer with some painful chronic ailment, such as

Rheumatism,
Arthritis,
Neuritis,
Upset Stomach,
Biliousness,
Backaches,
Headaches,

or any other of the many troubles that so often follow long-neglected faulty elimination, check up now. Find the cause. Cleanse yourself and keep yourself clean and regular inside, with Crazy Mineral Water made from Crazy Water Crystals.

* * * 70 to 75 per cent of disease today can be attributed to one condition. Crazy Water remedies this common condition.

If you * * * are suffering from arthritis, neuritis, high blood pressure, acidosis, rheumatism, lumbago, gout, nervousness, stomach distress and other painful afflictions * * * there is a way you can rid yourself from the sufferings of these conditions.

Keep your system clear of poisons. There are millions of satisfied users of Crazy Water all over the nation.

My trouble has been a poisonous system which seriously affected my vision * * * I came here for your health treatments. The poison has left my system, my normal vision has been restored, and I shall be ever grateful to Crazy Water and Crazy baths * *.

Crazy Water Crystals dissolved in water gives us genuine Crazy Water.

It is one of nature's greatest gifts to suffering mankind, for that cunning combination of 11 minerals in Crazy Water * * and now evaporated and sent to you as Crazy Water Crystals * * * has brought relief to more than forty millions of people * * *.

* * * others who are unable to come to the hotel are getting benefits just as remarkable by adding Crazy Crystals to their drinking water.

* * * know how different you feel when you visit mineral spas, so just add Crazy Water Crystals to your drinking water at home and get the many fine benefits offered * * *.

Anyone suffering from a chronic ailment should thoroughly investigate mineral waters. For hundreds, yes thousands of years, man has found relief from chronic disorders simply by drinking pure natural mineral waters. The mineral water spas of Europe and America are visited yearly by millions of people seeking relief from a wide variety of chronic ills. They are sent by their doctors * * * you only have to add Crazy Water Crystals to your regular drinking water, and in this inexpensive way you can enjoy the principal benefits to be gotten from a trip to the Wells.

* * * rheumatic condition * * * was so severe * * * did not have use of * * * left arm. After taking Crazy baths, * * * and drinking Crazy Water, he has shown remarkable improvement. If you are unable to come to the Crazy Hotel, you may receive practically the same benefit by the use of Crazy Crystals at home.

* * * the remedy given us by Nature.

* * * our natural product—Crazy Crystals.

Crazy Crystals—nature's own remedy for any ailment caused by a sluggish system.

* * * the producers of Crazy Crystals have made it possible for everyone to have the beneficial minerals in Crazy Water at home. Simply add Crazy Crystals to your drinking water—when you do this, you're helping nature with nature.

Give Crazy Water Crystals a chance to help you in the same simple, natural way that they have helped millions of people throughout America.

* * * This great natural product just naturally makes people feel better. It's the best safeguard * * * against ill health.

* * * Crazy Crystals. It's a simple natural product and not a man-made medicine * * *.

You don't want to take medicine, and we do not blame you for that. * * * Crazy Water Fiz Tablets * * * you'll agree it's the best thing * * * you've ever tried for colds, upset stomach and the like.

You're interested in learning how you can get rid of this bad feeling without taking medicine, * * * try drinking a glass of water to which you've added a couple of alkalizing effervescing Crazy Water Fiz Tablets * * *. If you don't like the medicine habit, get a bottle of Crazy Water Fiz Tablets from your druggist.

Today many of you are suffering from a bad cold or the flu * * * use Crazy Water Fiz, * * * pleasant to use—not like harsh unpleasant medicine at all. * * * It's different from anything you'll find in the drug store * * * and here's something you're particularly interested in. It doesn't have the disagreeable medicine effect.

* * * Crazy Water Crystals are particularly recommended for * * * those who have some chronic trouble caused by a sluggish system * * * those who need something to keep them normal and regular without resorting to harsh habit-forming laxatives.

It has been said that nature's three cure-alls are fresh air, sunshine and mineral water. * * * Crazy Water brings renewed health after many different remedies and medicines fail. * * * You can do this by getting Crazy Crystals.

Crazy Water has brought health and happiness to thousands * * * has made it possible for people to once again enjoy the blessings of robust health. Regardless of how miserable you feel * * * of how long you have suffered, do not despair; Commence drinking Crazy Water today. Wake up and start living.

* * * victim of illness * * * 100 per cent benefitted.

I have been relieved of a very bad stomach trouble by Crazy Crystals.

I have been using Crazy Water Crystals about three years. I had scarlet fever and it left me in a run-down condition. My father-in-law advised me to use your product and in less than two weeks I was up and walking and doing my work.

Crazy Water Crystals have brought local relief to many pale, run-down, nervous folks who couldn't sleep, who had no appetite and who suffered from headaches, biliousness, stomach distress and other unpleasantness due to poor elimination from the digestive tract.

I am really proud and grateful for what Crazy Water Crystals have done for me. About a year ago I noticed my joints would ache, my arms and hands felt numb, so I started drinking Crazy Water. In less than two weeks I was feeling different—of course better. I still drink Crazy Water and will be drinking it the next time you hear from me.

PAR. 5. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of their mineral waters and derivatives thereof, the respondents have represented, and do now represent, directly and indirectly, that constipation and "faulty elimination" are the cause of and associated with the following, among other, diseases, ailments, afflictions and conditions: diseases of the alimentary tract, such as intestinal stasis, chronic constipation, mucous colitis, nervous indigestion, urticaria; conditions involving the urinary tract, kidneys and gall duct, cystitis, urethritis, cirrhosis of the liver, chronic metritis, parametritic exudations; diabetes mellitus, gravel and calculous concretion in the bladder and gall duct; fevers, toxic conditions, typhoid, influenza, gastrointestinal disturbances, anaphylaxis, nephritis, pyelitis, catarrhal jaundice, cholecystitis, Bright's disease, kidney trouble, obesity, irregularities of the liver, gall duct and bladder, rheumatism,

arthritis, neuritis, upset stomach, biliousness, backaches, headaches, high blood pressure, acidosis, lumbago, gout, nervousness, poisonous system, affected vision, colds, scarlet fever, run-down condition, insomnia, loss of appetite, lack of energy, aching joints, numbness of limbs; and that said mineral waters and the derivatives thereof possess beneficial, therapeutic properties with respect to curing or remedying and competently and effectively treating constipation and "faulty elimination" and therefore the diseases, ailments, afflictions, and conditions hereinabove set forth.

PAR. 6. The aforesaid representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's mineral waters and the derivatives thereof possess no therapeutic properties in excess of those of a cathartic or laxative plus a tendency to temporarily neutralize excess gastric acidity and serve no other purpose than to assist in a temporary evacuation of the intestinal tract and to tend to temporarily neutralize excess gastric acidity. The use of said mineral waters and the derivatives thereof for diseases of the alimentary tract, such as intestinal stasis, chronic constipation, mucous colitis, nervous indigestion, conditions involving the urinary tract, kidneys and gall duct, cystitis, urethritis, gastrointestinal disturbances, upset stomach, biliousness, backaches, headaches, nervousness, run-down condition, insomnia, loss of appetite, and lack of energy is limited to such temporary relief which may result from the temporary evacuation of the intestinal tract and a tendency to temporarily neutralize excess gastric acidity, when such diseases, ailments, afflictions, and conditions are due to and persist because of excess gastric acidity or constipation. The aforesaid diseases, ailments, afflictions, and conditions are not necessarily caused by, associated with or due to and do not generally persist because of excess gastric acidity or constipation. The use of said mineral waters and the derivatives thereof will not serve as a remedy or cure for or eliminate or in any way effect any tendency to excess gastric acidity or constipation. When such diseases, ailments, afflictions, and conditions are due to causes other than excess gastric acidity or constipation, said mineral waters and the derivatives thereof will be of no beneficial or therapeutic value in the treatment thereof.

Respondents' mineral waters and the derivatives thereof possess no beneficial therapeutic properties whatsoever in the treatment of any of the following diseases, ailments, afflictions, and conditions: Urticaria, cirrhosis of the liver, chronic metritis, parametritic exudations, diabetes mellitus, gravel and calculous concretion in the bladder and gall duct, fevers, toxic conditions, typhoid, influenza, anaphylaxis, nephritis, pyelitis, catarrhal jaundice, cholecystitis, Bright's

disease, kidney trouble, obesity, irregularities of the liver, gall duct and bladder, rheumatism, arthritis, neuritis, high blood pressure, acidosis, lumbago, gout, poisonous system, affected vision, colds, scarlet fever, aching joints, and numbness of limbs. The aforesaid diseases, ailments, afflictions, and conditions are not caused by or associated with and do not persist because of excess gastric acidity or constipation.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading advertisements with respect to their mineral waters and the derivatives thereof, 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 advertisements are true, and as a result of such erroneous and mistaken belief, engendered as aforesaid, has the tendency to induce and has induced a substantial portion of the purchasing public to purchase respondents' said mineral waters and derivatives thereof, thereby diverting trade to the respondents from their competitors who do not use the acts, practices and methods used by respondents, to the substantial injury of said competitors in said commerce, and to the injury of the public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that the facts therein stated may be taken as the facts in this proceeding, in lieu of testimony, and that the Commission may proceed to make its report and state its findings as to the facts, including inferences drawn by it therefrom, and state its conclusion based thereon, and, without filing of briefs or presentation of argument, may enter its 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 respondent Crazy Water Co., a corporation, its officers, representatives, agents, and employees, and respondents Carr P. Collins, H. H. Collins, W. M. Woodall, and J. A. Pondrom, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondents' products, "Crazy Mineral Water," "Crazy Water Crystals," or "Crazy Fiz," or any other product or products composed of substantially similar ingredients or possessing substantially similar therapeutic 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 advertisements (*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:

(A) That respondents' products are a cure or remedy for diseases or symptoms of diseases of the alimentary tract, such as intestinal stasis, chronic constipation, mucous colitis, nervous indigestion, conditions involving the urinary tract, kidneys and gall duct, cystitis, urethritis, gastro-intestinal disturbances, upset stomach, biliousness, backaches, headaches, nervousness, run-down condition, insomnia, loss of appetite, or lack of energy, or a competent or effective treatment therefor, in excess of the extent to which said products, by reason of temporarily relieving constipation and temporarily relieving gastric acidity, may be beneficial in the treatment of such disorders when constipation and gastric acidity are contributing factors therein.

(B) That the diseases or symptoms of diseases enumerated in subparagraph (A) hereof, or any of them, are necessarily caused by, or generally persist because of, or are necessarily associated with, constipation, faulty elimination or excess gastric acidity.

(C) That respondents' products are a cure or remedy or a competent or effective treatment for constipation, faulty elimination, or excess gastric acidity, or that the use of said products will serve to eliminate or check the tendency to constipation, faulty elimination, or excess gastric acidity; or that said products will have any therapeutic effect other than to assist in the temporary evacuation of the intestinal tract, and to tend to temporarily neutralize excess gastric acidity.

(D) That respondents' products posses any therapeutic properties beyond those of a cathartic or laxative and as an antacid with a tendency to temporarily neutralize excess gastric acidity.

(E) That respondents' products are a cure or remedy or a competent or effective treatment for, or possess any beneficial therapeutic

properties whatsover in the treatment of, any of the following diseases, ailments, afflictions and conditions: Urticaria, cirrhosis of the liver, chronic metritis, parametritic exudations; diabetes mellitus, gravel and calculous concretion in the bladder and gall duct; fevers, toxic conditions, typhoid, influenza, anaphylaxis, nephritis, pyelitis, catarrhal jaundice, cholecystitis, Bright's disease, kidney trouble, obesity, irregularities of the liver, gall duct and bladder, rheumatism, arthritis, neuritis, high blood pressure, acidosis, lumbago, gout, poisonous system, affected vision, colds, scarlet fever, aching joints, and numbness of limbs.

(F) That the diseases, ailments, afflictions, and conditions set forth in paragraph (E) hereof, or any of them, are caused by, or generally persist because of, or are generally associated with, excess gastric acidity or constipation.

2. 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 products, 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

JULIUS MILLER AND JESSIE MILLER, TRADING AS MILLER 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 4363. Complaint, Oct. 25, 1940—Decision, Dec. 12, 1940

Where two individuals engaged in interstate sale and distribution of their variously designated "Belite," "Reducers," and "Miller's Reducing Prescription"; in advertisements of their said medicinal preparation which they disseminated and caused to be disseminated through the mails and by other means in commerce, and otherwise, and by advertisements in newspapers and other advertising literature, and which were intended and likely to induce purchase of their said product—

(*a*) Represented that their said medicinal preparation was a cure or remedy for obesity and constituted a safe, competent, and effective treatment therefor, and for reduction of body weight, facts being it did not constitute such a treatment, and was not safe, by virtue of inclusion therein of desiccated thyroid extract, present therein 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 which, thus used, would accelerate rate of metabolism, burning body tissues in excess of that which is normal, and might produce nausea and various other effects, including angina pectoris, and result, among other things, in permanent injury to tissues, organic functions, and entire body mechanism, and irreparable injury to heart muscles, as in detail set forth; and

(*b*) Failed to reveal in said advertisements facts material in the light of the representations therein contained, and that use of said preparation under conditions prescribed in said advertisements, or under such conditions as are customary or usual, might result in serious and irreparable injury to health, in that it accelerated rate of metabolism, thereby burning body tissues in excess of normal and causing permanent injury to heart, thyroid gland, and other vital organs;

With effect, through use of aforesaid false, deceptive, and misleading statements and representations with respect to their said preparation, disseminated as aforesaid, 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 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. James L. Baker for the Commission.

Stone & Hoffenberg, of Rochester, N. Y., 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 Julius Miller and Jessie Miller, individuals trading as Miller Drug 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, Julius Miller and Jessie Miller, are individuals trading as Miller Drug Co., with their office and principal place of business at 1160 North Clinton Avenue, Rochester, N. Y., from which address they transact business under the above trade name.

Respondents, Julius Miller and Jessie Miller as individuals trading as Miller Drug Co., act in conjunction and in cooperation with each other in performing the acts and practices hereinafter alleged.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a certain medicinal preparation designated as Belite, Reducers, and as Miller's Reducing Prescription.

In the course and conduct of their business the respondents cause said medicinal preparation when sold to be transported from their place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia.

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 product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; 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, mis-

leading, 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 other advertising literature, are the following:

Reduce 10–20 lbs. in a month.
Miller's Reducing Prescription.
Harmless ingredients guaranteed by
the Miller Drug Co.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondents represent and have represented that their medicinal preparation, designated as Belite, Reducers, and as Miller's Reducing Prescription, is a cure or remedy for obesity and constitutes a safe, competent, and effective treatment for obesity and the reduction of bodily weight.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the medicinal preparation sold and distributed by the respondents as aforesaid, designated as Belite, Reducers, and as Miller's Reducing Prescription, is not a cure or remedy for obesity and does not constitute a competent or effective treatment for obesity or the reduction of bodily weight. Moreover, said preparation is not safe, in that it contains desiccated thyroid extract.

The aforesaid drug is present in the said medicinal preparation in quantity 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 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. 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 muscles, with auricular fibrillation.

The advertisements disseminated by the respondents as aforesaid constitute false advertisements for the further 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 serious and irrepar-

able 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.

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 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. 7. The foregoing 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 October 25, 1940, issued, and on October 26, 1940, served its complaint in this proceeding upon respondents, Julius Miller and Jessie Miller, individuals trading as Miller Drug Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Subsequently respondents filed their answer, in which 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, Julius Miller and Jessie Miller, are individuals trading as Miller Drug Co., with their office and principal place of business at 1160 North Clinton Avenue, Rochester, N. Y., from which address they transact business under the above trade name.

Respondents, Julius Miller and Jessie Miller, as individuals trading as Miller Drug Co., act in conjunction and in cooperation with each other in performing the acts and practices hereinafter described.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a certain medicinal preparation designated as Belite, Reducers, and as Miller's Reducing Prescription.

In the course and conduct of their business the respondents cause said medicinal preparation when sold to be transported from their place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia.

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 product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and the 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 United States mails and by advertisements in newspapers and other advertising literature, are the following:

Reduce 10-20 lbs. in a month. Miller's
Reducing Prescription. Harmless ingredients
guaranteed by the Miller Drug Co.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondents represent and have represented that their medicinal preparation, designated as Belite, Reducers, and as Miller's Reducing Prescription, is a cure or remedy for obesity and constitutes a safe, competent, and effective treatment for obesity and the reduction of bodily weight.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the medicinal preparation sold and distributed by the respondents as aforesaid, designated as Belite, Reducers, and as Miller's Reducing Prescription, is not a cure or remedy for obesity and does not constitute a competent or effective treatment for obesity or the reduction of bodily weight. Moreover, said preparation is not safe, in that it contains desiccated thyroid extract.

The aforesaid drug is present in the said medicinal preparation in quantity 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 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. 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 muscles, with auricular fibrillation.

The advertisements disseminated by the respondents as aforesaid constitute false advertisements for the further 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 serious and 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.

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 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 the 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, Julius Miller and Jessie Miller, individually and trading as Miller Drug Co., or trading under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their medicinal preparation designated as Belite, Reducers, and Miller's Reducing Prescription, or any medicinal preparation of substantially similar composition, or possessing 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 advertisement represents, directly or through inference, that said preparation is a cure or remedy for obesity or constitutes a safe, competent, or effective treatment for obesity or the reduction of body weight; or which advertisement fails to reveal that the use of said preparation may result in 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 advertisement fails to reveal that the use

of said preparation may result in permanent injury to the heart, thyroid gland, and other vital organs.

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

CHARLES KELLER, TRADING AS SORBOL COMPANY AND KELLER COMPANY

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

Docket 4368. Complaint, Oct. 30, 1940—Decision, Dec. 12, 1940

Where an individual engaged in interstate sale and distribution of his "Sorbol-Quadruple" and "Bukets" medicinal preparations, in advertisements of his said products which he disseminated and caused to be disseminated through the mails, and by other means in commerce, and otherwise, and by advertisements in newspapers and periodicals and by circulars, leaflets, and other advertising literature—

(*a*) Represented directly or through inference that frequent and scanty flow of urine and rheumatic pains and leg pains were due to presence in body of excess acid and waste and that his said "Bukets" eliminated such acid and waste therefrom and thereby constituted a cure or remedy for such ailments or conditions, facts being conditions above referred to were not usually or generally due to presence in body of excess acid or waste and even in those cases in which such conditions might be due thereto, use of said product was of no substantial value in eliminating such acid or waste, and product in question was not a cure or remedy for conditions aforesaid set forth and possessed no substantial therapeutic value in treatment thereof;

(*b*) Represented that his said "Sorbol-Quadruple" constituted a cure or remedy for simple goitre and possessed substantial therapeutic value in the treatment of such condition and was entirely safe and harmless, facts being it did not constitute a cure or remedy for goitre of any kind, possessed no substantial therapeutic value in the treatment of such condition and was not in all cases safe or harmless, by virtue of inclusion therein of potassium iodide in quantity sufficient to cause, in some instances, injury to health if taken under conditions prescribed in advertisements in question or under such conditions as are customary or usual, and might be harmful to those having any forms of goitre other than simple colloidal goitre and to those having tuberculosis in either active or arrested stage, by virtue of action thereof in such cases; and

(*c*) Failed to include in his said advertisements statement to effect that said preparation last referred to should not be used by persons having goitre other than simple goitre, or by those having tuberculosis, nor cautionary statement to effect that product in question should be used only as directed on label thereof, and thereby failed to reveal facts material in light of representations contained in advertisements in question, and that use of product under conditions prescribed therein or under such conditions as are customary or usual might result in injury to health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that his preparations possessed properties which they did not in fact possess, and that said "Sorbol-Quadruple" was safe and harmless, and with result, as consequence of such belief thus

engendered, that purchasing public was induced to and did purchase substantial quantities of his said products:

Held, That such acts and practices under the circumstances set forth are all to the prejudice and injury of the public and constitutes unfair and deceptive acts.

Mr. Karl Stecher for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Charles Keller, an individual, trading and doing business as Sorbol Co. and as Keller 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 Keller, is an individual, trading and doing business as Sorbol Co. and as Keller Co., with his principal office and place of business in the city of Mechanicsburg, State of Ohio. Respondent is now, and for more than 2 years past has been, engaged in the business of selling and distributing two medicinal preparations known as "Sorbol-Quadruple" and as "Bukets." In the course and conduct of his business respondent causes said medicinal preparations, when sold, to be transported from his place of business in the State of Ohio to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in his said medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said products 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 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 and other advertising literature are the following:

With respect to the preparation "Bukets"

Flush the kidneys as you would the bowels. Help nature eliminate excess acid and waste which can cause the irritation that wakes you up, frequent or scanty flow, * * * backache.

Excess acids can cause the irritation resulting in getting up nights, frequent or scanty flow, * * * backache or leg pains.

Rheumatic pains may result if kidneys do not regularly eliminate excess acid and other wastes.

Disturbed sleep may result if the kidneys do not regularly eliminate excess acid and other waste.

With respect to the preparation "Sorbol-Quadruple"

GOITRE

MAKE THIS QUICK TEST

Get a small bottle of Sorbol-Quadruple, a colorless liniment. For simple goitre apply twice daily. It is so pleasant and easy to use. Does not interfere with work or pleasure. Thousands have obtained relief. Get more information at most drug stores.

PAR. 3. Through the use of the foregoing statements and representations and other statements and representations similar thereto not specifically set out herein, the respondent represents directly or through inference that frequent and scanty flow of urine, rheumatic pains, backache, and leg pains are due to the presence in the body of excess acid and waste; that respondent's preparation "Bukets" eliminates excess acid and waste from the body and thereby constitutes a cure or remedy for said ailments or conditions. Respondent also represents in the manner aforesaid that his preparation "Sorbol-Quadruple" constitutes a cure or remedy for simple goitre and possesses substantial therapeutic value in the treatment of such condition; that said preparation is entirely safe and harmless.

PAR. 4. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the conditions known as frequent and scanty flow of urine, rheumatic pains, backache, and leg pains are not usually or generally due to the presence in the body of excess acid or waste. Even in those cases in which such conditions may be due to the presence of excess acid or waste, the use of said preparation is of no substantial value in eliminating such excess acid or waste. Said preparation is not a cure or remedy for frequent

or scanty flow of urine, rheumatic pains, backache, or leg pains, nor does said preparation possess any substantial therapeutic value in the treatment of such conditions. In truth and in fact, said preparation possesses no therapeutic value in excess of that of a mild diuretic.

Respondent's preparation "Sorbol-Quadruple" does not constitute a cure or remedy for goitre of any kind, nor does it possess any substantial therapeutic value in the treatment of such condition. Said preparation is not, in all cases, safe or harmless, as it contains the drug potassium iodide in a quantity 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 any form of goitre other than simple, colloid goitre and to those having tuberculosis in either the active or arrested stage. The hazard in cases of goitre is the tendency to convert a simple adenoma to a toxic adenoma. In cases of arrested tuberculosis, the tendency of potassium iodide is to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tubercular process. In cases of active tuberculosis, the tendency of potassium iodide is to prevent or retard the healing process.

PAR. 5. The advertisements disseminated by the respondent, as aforesaid, contain neither a statement to the effect that the preparation "Sorbol-Quadruple" should not be used by persons having goitre other than simple goitre or by persons having tuberculosis, nor a cautionary statement to the effect that said preparation should be used only as directed on the label thereof. Consequently, such advertisements constitute false advertisements in 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.

PAR. 6. The use by the respondent of the foregoing false advertisements, 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 respondent's preparations possess properties which they do not, in fact, possess, and that said preparation, "Sorbol-Quadruple" is safe and harmless, when such is not the fact. As a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to purchase, and has purchased substantial quantities of 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 October 30, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Charles Keller, an individual trading and doing business as Sorbol Co. and as Keller Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On November 18, 1940, respondent filed his answer, in which answer respondent 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 now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent, Charles Keller, is an individual, trading and doing business as Sorbol Co. and as Keller Co., with his principal office and place of business in the city of Mechanicsburg, State of Ohio. Respondent is now, and for more than 2 years last past has been, engaged in the business of selling and distributing two medicinal preparations known as "Sorbol–Quadruple" and as "Bukets." In the course and conduct of his business respondent causes said medicinal preparations, when sold, to be transported from his place of business in the State of Ohio to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in his said medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia.

Par. 2. In the course and conduct of his aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said products 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 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, and other advertising literature are the following:

With respect to the preparation "Bukets"

Flush the kidneys as you would the bowels. Help nature eliminate excess acid and waste which can cause the irritation that wakes you up, frequent or scanty flow, * * * backache.

Excess acids can cause the irritation resulting in getting up nights, frequent or scanty flow, * * * backache or leg pains.

Rheumatic pains may result if kidneys do not regularly eliminate excess acid and other wastes.

Disturbed sleep may result if the kidneys do not regularly eliminate excess acid and other waste.

With respect to the preparation "Sorbol-Quadruple"

GOITRE

MAKE THIS QUICK TEST

Get a small bottle of Sorbol-Quadruple, a colorless liniment. For simple goitre apply twice daily. It is so pleasant and easy to use. Does not interfere with work or pleasure. Thousands have obtained relief. Get more information at most drug stores.

PAR. 3. Through the use of the foregoing statements and representations and other statements and representations similar thereto not specifically set out herein, the respondent represents, directly or through inference, that frequent and scanty flow of urine, rheumatic pains, backache, and leg pains are due to the presence in the body of excess acid and waste; that respondent's preparation "Bukets" eliminates excess acid and waste from the body and thereby constitutes a cure or remedy for said ailments or conditions. Respondent also represents in the manner aforesaid that his preparation "Sorbol-Quadruple" constitutes a cure or remedy for simple goitre and possesses substantial therapeutic value in the treatment of such condition; that said preparation is entirely safe and harmless.

PAR. 4. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, the condition known as frequent and scanty flow of urine, rheumatic pains, backache, and

leg pains are not usually or generally due to the presence in the body of excess acid or waste. Even in those cases in which such conditions may be due to the presence of excess acid or waste, the use of said preparation is of no substantial value in eliminating such excess acid or waste. Said preparation is not a cure or remedy for frequent or scanty flow of urine, rheumatic pains, backache, or leg pains, nor does said preparation possess any substantial therapeutic value in the treatment of such conditions. In truth and in fact, said preparation possesses no therapeutic value in excess of that of a mild diuretic.

Respondent's preparation "Sorbol-Quadruple" does not constitute a cure or remedy for goitre of any kind, nor does it possess any substantial therapeutic value in the treatment of such condition. Said preparation is not, in all cases, safe or harmless, as it contains the drug potassium iodide in a quantity 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 any form of goitre other than simple, colloid goitre and to those having tuberculosis in either the active or arrested stage. The hazard in cases of goitre is the tendency to convert a simple adenoma to a toxic adenoma. In cases of arrested tuberculosis, the tendency of potassium iodide is to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tubercular process. In cases of active tuberculosis, the tendency of potassium iodide is to prevent or retard the healing process.

PAR. 5. The advertisements disseminated by the respondent, as aforesaid, contain neither a statement to the effect that the preparation "Sorbol-Quadruple" should not be used by persons having goitre other than simple goitre or by persons having tuberculosis, nor a cautionary statement to the effect that said preparation should be used only as directed on the label thereof. Consequently, such advertisements constitute false advertisements in 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.

PAR. 6. The use by respondent of the foregoing false advertisements, 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 respondent's preparations possess properties which they do not, in

fact, possess, and that said preparation, "Sorbol-Quadruple" is safe and harmless, when such is not the fact. As a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to purchase, and has purchased substantial quantities of respondent's 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, Charles Keller, individually, and trading as Sorbol Co. and as Keller 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, or distribution of his medicinal preparations designated "Sorbol-Quadruple" and "Bukets," or any preparations of substantially similar composition 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 advertisement represents, directly or through inference, that the conditions known as frequent and scanty flow of urine, rheumatic pains, backache or leg pains are usually or generally due to the presence in the body of excess acid or waste; that said preparation "Bukets" is of any substantial value in eliminating excess acid or waste from the body; that said preparation "Bukets" constitutes a cure or remedy for frequent or scanty flow of urine, rheumatic pains, backache or leg pains, or that said preparation "Bukets" possesses any substantial therapeutic value in the treatment of such conditions; that said preparation

"Bukets" possesses any therapeutic value in excess of that of a mild diuretic; that said preparation "Sorbol-Quadruple" constitutes a cure or remedy for goitre of any kind, or that it possesses any substantial therapeutic value in the treatment of such condition; or which advertisement with respect to said preparation "Sorbol-Quadruple" fails to reveal that said preparation should not be used by those who have tuberculosis or any form of goitre other than simple 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 any form of goitre other than simple 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 preparations, which advertisement contains any of the representations prohibited in paragraph 1 hereof; or which advertisement with respect to said preparation "Sorbol-Quadruple" fails to reveal that said preparation should not be used by those having tuberculosis or any form of goitre other than simple 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 any form of goitre other than simple goitre.

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

WALTER P. PHILLIPS, TRADING AS PHILLIPS CARD COMPANY

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

Docket 4311. Complaint, Sept. 12, 1940—Decision, Dec. 13, 1940

Where an individual engaged in interstate sale and distribution of Christmas cards, gift wrappings, and similar products; in advertising in newspapers and periodicals of general circulation, and in folders, pamphlets, and letters, employed by him in course and conduct of his said business in soliciting the sale of his products, and agents to sell same—

Made use of words "Sample Free," and sent to those replying folder containing 10 Christmas cards of various designs so marked with matter printed thereon as to be used as display samples, and, in addition "Supercraft" assortment of 21 Christmas cards not so marked, and suitable for use, together with invoice upon which was printed statement "Supercraft Assortment 21 Christmas Cards, Wholesale Price—50¢," and featured words "Free Sample Offer," and "We will cancel this invoice," followed by statement that if recipient sold certain number of boxes of such assortments within 15 days after receipt of sample assortment this would be done and that, failing this, remittance must be sent or box returned; and, if so-called free sample offer was not accepted and 50 cents paid, or assortment returned, sent recipient letter to effect 50-cent charge would be cancelled upon placing of $3 order for additional samples to show prospects;

Facts being said statements, representations, and prices quoted as above set forth were deceptive, false, and misleading and those replying in response to such free-sample advertisement had not ordered of said individual merchandise sent out as above set forth, said twenty-one-card assortment was not given free but recipient was required to pay for return, or order specified number of boxes within 15 days, to comply with directions of said individual, and assortment of cards thus shipped to such persons was not in fact free or sample offer since consideration in either payment of money or rendering of services was required of person receiving merchandise before assortment became, without obligation, his property;

With effect, through use of term "free sample" or word "free" and import and implication therein of delivery of said cards as gift or gratuity, of deceiving members of the purchasing public and inducing them to believe that all of said samples were to be delivered without cost or condition, and, because of such belief thus engendered, to request the sending of such samples, and with consequence of thereby placing them under obligation to said individual which they did not anticipate or intend to assume, in responding to said advertisement and ordering such "free" samples, and with result, through acts and practices of said individual in advertising said so-called free samples, and shipment to those replying, as above described, of said invoiced articles, and without prior notice of terms and conditions upon which shipped and without shipment having been authorized, of unfairly

and deceptively imposing upon such members obligation either to pay for articles thus shipped or return same or perform services in payment, and of inducing many to pay for such merchandise in either money or services and of thereby increasing sale of said individual's merchandise in commerce:

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 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 Walter P. Phillips, individually and trading as Phillips Card 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, Walter P. Phillips, is an individual operating and doing business under the trade name Phillips Card Co., with his principal office and place of business now located at 50 Hunt Street, Newton, Mass. Respondent formerly operated said business at 11 Beacon Street, Boston, Mass.

PAR. 2. Respondent is now, and for more than 3 years last past has been, engaged in the business of selling and distributing Christmas cards, gift wrappings, and similar products under the trade name Phillips Card Co. Said respondent now causes, and for more than 1 year last past has caused, his said products to be sold by mail order and otherwise through various advertising mediums and has caused the same, when sold, to be transported from his principal place of business in Newton, Mass., formerly Boston, Mass., to purchasers thereof located in various States of the United States other than the aforesaid State of Massachusetts, and in the District of Columbia.

There is now, and has been during all the times hereinabove stated, 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 his business herein set out and described in paragraphs 1 and 2, respondent, in soliciting the sale of his aforesaid products, under pretense of soliciting agents for the sale of said products, and for the purpose of inducing the

purchasing public to buy said products, has circulated by mail certain statements and representations in advertisements published in newspapers and magazines having an interstate circulation, and in folders, pamphlets, and letters sent to purchasers and prospective purchasers through the mails, typical of which statements and representations, among others, are the following:

Amazing quick cash! Show fast selling Christmas Card with name. Low as 50 for $1.00. 8 appealing assortments, 21 cards $1.00. "Supercraft" in box, pays 100% profit. Sample free. Phillips Card, 11 Beacon, Dept. 2, Boston, Mass.

Take advantage of our liberal, below cost sample offer to secure your samples at special money-saving prices.

Special sample offer
E-X-T-E-N-D-E-D

---

5 sample boxes only $1.75
Postpaid Regular price $2.75
Samples worth $4.60 retail
Big sample outfits FREE
* * *
SAVE MONEY
Samples Worth $4.60 Retail
For Only $1.75 Postpaid
* * *

Upon request for the free samples mentioned in said advertisements, respondent sends a folder containing 10 Christmas cards of various designs, so marked with matter printed thereon as to be useless except as sample advertising matter. In addition thereto, however, he sends a "Supercraft" assortment of 21 Christmas cards, unmarked and suitable for use, together with an invoice upon which is imprinted the following statement:

Supercraft Assortment 21 Christmas Cards. Wholesale price 50¢.
Free Sample Offer.
We Will Cancel This Invoice if you order 12 or more boxes of our Supercraft 21 card assortment within 15 days after you receive the sample assortment. After 15 days, since the sample box is sent you on approval your remittance must be sent to us or the box returned.

If the "free sample" offer appearing on the face of the invoice is not accepted, and the 50 cents paid, and the "Supercraft" assortment is not returned, the proposed respondent follows up with a "dunning" letter and a proposition whereby the recipient can secure another "free sample box" of cards upon payment of the 50 cents due for the "Supercraft" assortment and the placing of a $3 order for cards. He is also offered a "cash bonus certificate" for the full amount of

the order and advised that the offer expires within a time therein specified.

PAR. 4. In truth and in fact, the statements and representations and prices quoted pursuant thereto, hereinabove set out, are deceptive, false, and misleading. Respondent has no order for, and the purported purchaser has not ordered, the merchandise sent out in the manner set forth hereinabove to members of the public who write in for respondent's "free sample" Christmas cards. Said purported "free sample" Christmas cards are not given free and are only given upon condition of the purchase of other merchandise; said special price of $1.75 purported to be offered only to agents and only for a limited time for said 5 sample boxes of Christmas cards and wrappings represented to sell wholesale at $2.75 and to have a retail selling price value of $4.60 is not, in fact, a reduced or special price to agents only, for a limited period of time. Said price of $1.75, alleged to be a special price for an alleged limited period of time is, in fact, the usual, regular, and customary retail selling price of said 5-box combination Christmas cards and wrappings, and respondent has regularly and customarily sold said 5-box combination packages of Christmas cards and wrappings to all purchasers for a period of several years at said price.

PAR. 5. In truth and in fact, the "Supercraft" assortment of 21 cards sent out by respondent on approval, as hereinbefore set-out, is not in fact "free" or a "free sample," since a consideration, either the payment of money or the rendering of services, is required of the person receiving said merchandise. The advertisement by respondent of "free samples" or any other use of the word "free" or a similar expression in a manner purporting to be a gift or gratuity has a tendency and capacity to deceive members of the public and to induce them to believe that such samples are in fact free, and by reason of such belief, so engendered, to request the sending of such samples. Said members of the consuming public did not and do not thereby anticipate or intend to obligate themselves either to pay for said merchandise or to perform services in lieu thereof or to return said merchandise.

The shipment by respondent of said invoiced articles of merchandise to a customer or prospective customer without prior notice of the terms under which said articles are to be sent and without having obtained permission to make such shipment, unfairly and deceptively imposes upon such customer or prospective customer a restraint either to pay for the goods so shipped or to return the same or to perform services in lieu thereof.

Furthermore, many of the individuals to whom the "Supercraft" assortment of 21 cards is sent by the respondent in the manner hereinabove set out have remitted to respondent the sum of 50 cents in accordance with the terms of the invoice. Respondent thereby is enabled to sell his products to many members of the general public and to receive his regular wholesale price therefor in cases where otherwise no sales would have been made. Respondent thereby receives additional revenue and increases his sales to the general public by the use of the aforesaid deceptive practices.

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 the 12th day of September 1940, issued, and on September 13, 1940, served, its complaint in this proceeding, charging the respondent, Walter P. Phillips, an individual, trading as Phillips Card Co., with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, a stipulation was entered into, whereby it was stipulated and agreed that a statement of facts, signed and executed by the respondent and by W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Walter P. Phillips, is an individual operating and doing business under the trade name Phillips Card

Co., with his principal office and place of business now located at 50 Hunt Street, Newton, Mass. Respondent formerly operated said business at 11 Beacon Street, Boston, Mass.

PAR. 2. Respondent is now, and for 20 years last past has been, engaged in the business of selling and distributing Christmas cards, gift wrappings, and similar products under the trade name Phillips Card Co. Said respondent causes said products, when sold, to be transported from his place of business in Massachusetts to the purchasers thereof located in various States of the United States other than the aforesaid State of Massachusetts and in the District of Columbia.

Respondent maintains 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, as described in paragraphs 1 and 2 hereof, respondent, in soliciting the sale of his aforesaid products and for the purpose of soliciting agents for the sale of said products, has circulated certain statements and representations in advertisements published in newspapers and magazines having a general circulation, and in folders, pamphlets, and letters sent to purchasers and prospective purchasers through the mails. Typical of such statements and representations are the following:

Amazing quick cash! Show fast selling Christmas Card with name. Low as 50 for $1.00. 8 appealing assortments. 21 cards $1.00. "Supercraft" in box, pays 100% profit. Samples free. Phillips Card, 11 Beacon, Dept. 2, Boston, Mass.

Take advantage of our liberal, below cost sample offer to secure your samples at special money-saving prices.

SAVE MONEY

Samples Worth $4.60 Retail

For Only $1.75 Postpaid

Special Sample Offer

Only one sample offer to salesman

1 Gift Wrappings Assortment	.60
1 Everyday Assortment	.60
1 Etchings Assortment	.60
1 Religious Assortment	.60
1 Humorous Assortment	.35
Regular Wholesale Price	$2.75
Retail Selling Price	$4.60

Costs You Only $1.75 Postpaid

Under request for the "free samples" mentioned in said advertisements, respondent sends a folder containing 10 Christmas cards of various designs so marked with matter printed thereon as to be used

as display samples. In addition thereto, however, he sends a "Supercraft" assortment of 21 Christmas cards, unmarked and suitable for use, together with an invoice upon which is imprinted the following statement:

Supercraft Assortment
21 Christmas Cards
Wholesale Price—50¢

FREE SAMPLE OFFER

WE WILL CANCEL THIS INVOICE

if you order 12 or more Boxes of our Supercraft—21 Card Assortment within 15 days after you receive the Sample Assortment. After 15 days, since the Sample Box is sent on approval, your remittance must be sent to us or the box returned.

If the "free sample" offer appearing on the face of the invoice is not accepted and the 50 cents paid, and the "Supercraft" assortment is not returned, the respondent sends to the recipient of said so-called "free sample offer" a letter containing a further offer whereby the 50 cents charge will be canceled upon the placing of a $3.00 order for additional samples to show to prospects.

PAR. 4. In truth and in fact, the statements, representations, and prices quoted pursuant thereto, hereinabove set out, insofar as the "Supercraft" assortment is concerned, are deceptive, false, and misleading. Respondent has no order for, and the prospective purchaser has not ordered, the merchandise sent out, in the manner set forth above, to members of the public who write in for respondent's "free sample" Christmas cards. Said "Supercraft" assortment of 21 Christmas cards is not given free, but the recipient is required to pay for, return, or order 12 or more boxes of said assortment within 15 days to comply with respondent's directions. The "Supercraft" assortment of 21 cards shipped to persons requesting "free samples" in response to said advertisement of the respondent, as hereinabove set out, is not in fact "free" or a "free sample," since a consideration, either the payment of money or the rendering of services, is required of the person receiving said merchandise before said assortment becomes the property of the recipient without obligation to the respondent.

The use by respondent of the term "free sample" or the word "free" in said advertisements, in the manner aforesaid, imports and implies the delivery of said cards as a gift or gratuity, and has the tendency and capacity to, and does, deceive members of the purchasing public and to induce them to believe that all of said samples are to be delivered without cost or condition, and, because of such erroneous belief so engendered, members of the purchasing public are induced to request

the sending of such samples and thereby are placed under an obligation to respondent which they did not anticipate or intend to assume when they responded to said advertisement and ordered the "free samples" advertised.

PAR. 5. The acts and practices of respondent in advertising said so-called "free samples" and the shipment by respondent to members of the public responding to such advertisement of said invoiced articles of merchandise without prior notice to such members of the public of the terms and conditions under which said articles are shipped and without having been authorized by such members of the public to make such shipments, unfairly and deceptively impose upon such members of the public an obligation either to pay for the articles of merchandise so shipped or to return the same or to perform services in payment therefor, and induce many members of the public to pay for said merchandise in money or services, thereby increasing the sales of respondent's said merchandise in commerce between and among the several States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, 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 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, Walter P. Phillips, individually and trading under the name Phillips Card Co. or any other name, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of Christmas cards, gift wrappings, and

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

Using the words "free," or "free sample," or any other word or words indicating a gift or gratuity, to designate, describe, or refer to merchandise delivered to members of the public which is not delivered without cost and unconditionally.

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

HERMAN CHILTON, TRADING AS CHILTON GREETINGS COMPANY

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

Docket 4313. Complaint, Sept. 12, 1940—Decision, Dec. 13, 1940

Where an individual engaged in interstate sale and distribution of greeting cards and Christmas wrapping materials; in advertising in various magazines and newspapers of national circulation, in course and conduct of his business and to induce purchase of his said cards and other merchandise by members of the general public—

Made use of words "Samples Free," and sent to those requesting free samples mentioned a folder containing such samples and, in addition, a box of greeting cards, accompanied by an invoice upon which appeared among other things advice that such assortment "is sent to you on approval so you may get started taking orders at once," and, under caption "Special free sample offer," statement "This memorandum bill will be cancelled if you return it to us with your order for 12 or more Blue Ribbon Christmas card assortments within 15 days from the time this bill is received," and advice that if said additional assortments were not ordered within such time limit "We will appreciate your sending a remittance of 50 cents to pay for the box," and "if not wanted please return promptly and bill will be cancelled"; facts being said 21-card assortment sent by him on approval as above set-out was not in fact free or a free sample, since either payment of money or rendering of services was required of person receiving such merchandise;

With tendency and capacity to deceive members of public and induce them to believe that such samples were in fact free, and, by reason thereof, to request sending of samples in question, neither anticipating nor intending to obligate themselves either to pay for such merchandise or perform services in lieu thereof or return same, and with result, through shipment by said individual of such invoiced articles to customer or prospective customer without prior notice of terms under which they were to be sent, and without having obtained permission to make such shipment, of unfairly and deceptively imposing constraint either to pay for goods thus shipped or return same, or perform services in lieu thereof, and with result further that many individuals remitted said 50 cents in accordance with terms of so-called memorandum bill of invoice, and such individual was thereby enabled to sell his products to many members of general public and receive his regular wholesale price therefor in cases where otherwise no sales would have been made, and thereby received additional revenue and increased his sales to general public through use of such deceptive practices, and members of public, relying upon truth of his false and misleading representations, were induced thereby to and did buy large quantities and amounts of his said cards and other merchandise:

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

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 Herman Chilton, an individual, trading as Chilton Greetings 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, Herman Chilton, is an individual trading under the firm name and style of Chilton Greetings Co., with his principal place of business at 147 Essex Street, Boston, Mass. He is now, and for several years last past has been, engaged in the business of selling and distributing greeting cards and Christmas wrapping materials. Respondent causes his said greeting cards and other merchandise, when sold, to be transported from his aforesaid place of business in the State of Massachusetts 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 greeting cards and other merchandise in commerce among and between the various States of the United States and in the District of Columbia.

Par. 2. In the course and conduct of his said business and for the purpose of inducing the purchase of said greeting cards and other merchandise by members of the general public respondent, by means of advertisements published in various magazines and newspapers of national circulation has made various false and misleading representations. Among and typical of such false and misleading representations are the following:

Christmas Cards, 50 for $1.00 With Name, Best Yet.

New! Sensational! Striking! Personal Christmas Cards with sender's name inscribed. Low as 50 for $1. Just show samples—take orders. Big profits. Wide variety designs, prices. Also famous new 21 card "Blue Ribbon" Christmas Box Assortment, sells for $1—pays you 50¢. Outstanding value. Many other fast sellers. No experience needed. Samples free. Chilton Greetings, 147–D Essex St., Boston, Mass.

Newest Money Makers! Personal Christmas Cards with customer's name imprinted. Sell Low as 50 for $1. Earn big money fast just showing gorgeous

new designs. Amazing values. Customers everywhere buy almost on sight. You get highest profits. Samples free. "Blue Ribbon" Box Wins Sales. 21 lovely Christmas Folders of irresistible beauty, appeal and charm. Fastest seller out at $1 retail—you make 100% profit! Also 9 other Box Assortment leaders to boost earnings. Free Sample Offer!

Upon request for the free samples mentioned in said advertisement, respondent sends a folder containing such samples, and in addition thereto sends a box of greeting cards accompanied by an invoice upon which is imprinted the following statement:

This sample Blue Ribbon Christmas Folder Assortment is sent to you "on approval" so you may get started taking orders at once.

Special Free Sample Offer.

This memorandum bill will be cancelled if you return it to us with your first order for 12 or more Blue Ribbon Christmas Assortments within 15 days from the time this bill is received. This sample box will then be yours free. If you do not order 12 Blue Ribbon Christmas Assortments within the 15 day time limit, we will appreciate your sending a remittance of 50 cents to pay for the box. If not wanted, please return promptly and bill will be cancelled.

PAR. 3. In truth and in fact, the 21 card "Blue Ribbon" Christmas Box Assortment sent by respondent on approval as hereinbefore set out is not in fact "free" or a "free sample," since a consideration, either the payment of money or the rendering of services, is required of the person receiving said merchandise. The advertisement by respondent of "free samples" or any other use of the word "free" or a similar expression in a manner purporting to be a gift or gratuity has a tendency and capacity to deceive members of the public and to induce them to believe that such samples are in fact free, and by reason of such belief, so engendered, to request the sending of such samples. Said members of the consuming public did not and do not thereby anticipate or intend to obligate themselves either to pay for said merchandise or to perform services in lieu thereof or to return said merchandise.

The shipment by respondent of said invoiced articles of merchandise to a customer or prospective customer without prior notice of the terms under which said articles are to be sent and without having obtained permission to make such shipment, unfairly and deceptively imposes upon such customer or prospective customer a constraint either to pay for the goods so shipped or to return the same or to perform services in lieu thereof.

Furthermore, many of the individuals to whom the 21-card "Blue Ribbon" Christmas Box Assortment is sent by the respondent in the manner hereinabove set-out have remitted to respondent the sum of 50 cents in accordance with the terms of the "memorandum bill" or

invoice. Respondent thereby is enabled to sell his products to many members of the general public and to receive his regular wholesale price therefor in cases where otherwise no sales would have been made. Respondent thereby receives additional revenue and increases his volume of sales to the general public by the use of the aforesaid deceptive practices.

PAR. 4. As a result of respondent's false and misleading representations, plans, and methods, as above set-out, members of the public, believing and relying on the truth of said representations, have been induced thereby to buy, and have bought, large quantities and amounts of respondent's greeting cards and other merchandise.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 12, 1940, issued and served its complaint in this proceeding upon respondent, Herman Chilton, an individual, trading as Chilton Greetings 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 28, 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Herman Chilton, is an individual trading under the firm name and style of Chilton Greetings Co., with his principal place of business at 147 Essex Street, Boston, Mass. He is now, and for several years last past has been, engaged in the business of selling and distributing greeting cards and Christmas wrapping materials. Respondent causes his said greeting cards and other merchandise, when sold, to be transported from his aforesaid place of business in the State of Massachusetts 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 greeting cards and other merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business and for the purpose of inducing the purchase of said greeting cards and other merchandise by members of the general public respondent, by means of advertisements published in various magazines and newspapers of national circulation has made various false and misleading representations. Among and typical of such false and misleading representations are the following:

Christmas Cards, 50 for $1.00 with Name, Best Yet.

New! Sensational! Striking! Personal Christmas Cards with sender's name inscribed. Low as 50 for $1. Just show samples—take orders. Big profits. Wide variety designs, prices. Also famous new 21 card "Blue Ribbon" Christmas Box Assortment, sells for $1—pays you 50¢. Outstanding value. Many other fast sellers. No experience needed. Samples free. Chilton Greetings, 147-D Essex St., Boston, Mass.

Newest Money Makers! Personal Christmas Cards with customer's name imprinted. Sell Low as 50 for $1. Earn big money fast just showing gorgeous new designs. Amazing values. Customers everywhere buy almost on sight. You get highest profits. Samples free. "Blue Ribbon" Box Wins Sales. 21 Lovely Christmas Folders of irresistible beauty, appeal and charm. Fastest seller out at $1 retail—you make 100% profit! Also 9 other Box Assortment leaders to boost earnings. Free Sample Offer!

Upon request for the free samples mentioned in said advertisement, respondent sends a folder containing such samples, and in addition thereto sends a box of greeting cards accompanied by an invoice upon which is imprinted the following statement:

This sample Blue Ribbon Christmas Folder Assortment is sent to you "on approval" so you may get started taking orders at once.

Special Free Sample Offer.

This memorandum bill will be cancelled if you return it to us with your first order for 12 or more Blue Ribbon Christmas Assortments within 15 days from the time this bill is received. This sample box will then be yours free. If you do not order 12 Blue Ribbon Christmas Assortments within the 15 day time limit, we will appreciate your sending a remittance of 50 cents to pay for the box. If not wanted, please return promptly and bill will be cancelled.

PAR. 3. In truth and in fact, the 21 card "Blue Ribbon" Christmas Box Assortment sent by respondent on approval as hereinbefore set out is not in fact "free" or a "free sample," since a consideration, either the payment of money or the rendering of services, is required of the person receiving said merchandise. The advertisement by

respondent of "free samples" or any other use of the word "free" or a similar expression in a manner purporting to be a gift or gratuity has a tendency and capacity to deceive members of the public and to induce them to believe that such samples are in fact free, and by reason of such belief, so engendered, to request the sending of such samples. Said members of the consuming public did not and do not thereby anticipate or intend to obligate themselves either to pay for said merchandise or to perform services in lieu thereof or to return said merchandise.

The shipment by respondent of said invoiced articles of merchandise to a customer or prospective customer without prior notice of the terms under which said articles are to be sent and without having obtained permission to make such shipment, unfairly and deceptively imposes upon such customer or prospective customer a constraint either to pay for the goods so shipped or to return the same or to perform services in lieu thereof.

Furthermore, many of the individuals to whom the 21-card "Blue Ribbon" Christmas Box Assortment is sent by the respondent in the manner hereinabove set out have remitted to respondent the sum of fifty cents in accordance with the terms of the "memorandum bill" or invoice. Respondent thereby is enabled to sell his products to many members of the general public and to receive his regular wholesale price therefor in cases where otherwise no sales would have been made. Respondent thereby receives additional revenue and increases his volume of sales to the general public by the use of the aforesaid deceptive practices.

PAR. 4. As a result of respondent's false and misleading representations, plans, and methods, as above set-out, members of the public, believing and relying on the truth of said representations, have been induced thereby to buy, and have bought, large quantities and amount of respondent's greeting cards and other merchandise.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission 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 inter-

vening 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, Herman Chilton, individually and trading under the name Chilton Greetings Co., or any other name, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of Christmas cards, gift wrappings, and similar products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the words "free," or "free sample," or any other word or words indicating a gift or gratuity, to designate, describe or refer to merchandise delivered to members of the public which is not delivered without cost and unconditionally.

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

CUP AND CONTAINER INSTITUTE, INC., ET AL

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

Docket 4036. Complaint, Feb. 17, 1940—Decision, Dec. 14, 1940

Where some 10 corporations and businesses, engaged in manufacture, as case might be, of paper drinking cups, paper food containers, ice cups, ice tubs and related products, and in interstate sale and distribution thereof to franchise distributors, wholesalers, jobbers, retailers, users, and other purchasers, and members then or thereafter and since 1935 of their Institute, or trade association, organized 2 years theretofore and during existence of the National Recovery Administration, and two other similarly engaged corporations which, while never members, cooperated with officers, directors, and members of such Institute and participated in some of the activities below set forth; constituting together dominant factors in paper drinking cup and paper food container industry and controlling more than 60 percent of the output and sale thereof, since 1938 in active and substantial competition with each other and with other members of the industry in the sale of their said products in commerce as aforesaid, and prior thereto and to adoption and use of acts, practices and methods below set-out, in active and substantial competition with each other and with other members of the industry in the sale of their said products in commerce as aforesaid, and which competition, but for such acts and practices, would have continued—

Entered into, along with certain other cooperating manufacturers and their aforesaid Institute, understandings and agreements, and carried out same through and by means of such Institute and various individuals, its officers, executive directors, and other directors; and thereby and as a result of and in pursuance of such various understandings and agreements thus entered and reached—

(*a*) Fixed and maintained in many instances uniform minimum prices for some of their aforesaid products, and filed with their said Institute their respective published price lists, discounts and terms of sale, and for more than a year subsequent to invalidation of said National Recovery Act in May 1935, notified such Institute of any deviation from their price lists by giving notice in writing five days prior to effective date thereof;

(*b*) Filed also with Institute sample copy of their franchise wholesaler, jobber, and user contract forms, and of their total individual dollar sales, and various other statistics pertaining to previous months' operations and various other related past periodical operating statistics;

(*c*) Debated and thrashed out at Institute meetings question of general price increase by all members and as result thereof and acting through instrumentality of said Institute and certain individuals, its general officers, agreed upon and established and rigidly adhered to general price increase of 15 percent on drinking and soda cups and certain dishes and food containers;

(*d*) Issued Public Business Price Lists and Public Business Policy Sheets and sent out same in majority of cases to their so-called franchise distributors who, along with wholesalers in some instances, acted as their agents in placing bids on Federal, State, county, and municipal business and quoting prices as set forth by their respective principals in accordance with the uniform minimum prices set forth in price lists above referred to, and through letters, bulletins, and sales instructions sent to their franchise distributors and wholesalers, emphasized and in effect required the quoting of the uniform and noncompetitive prices on Government bids which they had reached, and requested to be advised of any deviation from prices in question which might come to attention of such agents; and thereby brought about a uniformity in bidding including prices, discounts, and terms of sale in response to Government requests, and including therein such requests from the Procurement Division of the Treasury Department of the United States Government and large cities throughout the country; and

(*e*) Maintained through their said Institute procedure governing introduction of a new product by any corporate member or other cooperating manufacturer, and made use of procedure in question, maintained primarily to ascertain whether product did comply with various Governmental laws and regulations, to withhold sale and quotation of prices on new products until it had been classified into particular groups and its price furnished to Institute in advance of sale; and

Where said Institute and aforesaid individuals, officers and directors thereof and acting as the case might be as variously below set forth—

(*f*) Entered into and carried out understanding, agreement, combination, or conspiracy among themselves and with others as hereinabove indicated, with intent and effect of restricting, restraining, monopolizing, or eliminating competition in sale in interstate commerce of such paper drinking cups and various other similar products as above set forth; and

(*g*) Aided, abetted and encouraged and cooperated with Institute members in accomplishment of aforesaid objectives in acts and things above suggested, and through collecting from and disseminating among members and others in industry various information as to prices, terms and conditions of sale prior to publication date and in other respects:

Held, That such acts and practices, under the circumstances set forth were all to the prejudice of the public and had a dangerous tendency to and actually did hinder and prevent price competition among said corporations and businesses hereinbefore referred to in sale of such paper drinking cups, food containers and other and similar products in commerce and placed in their hands power to control and enhance prices and unreasonably restrain trade and commerce in products in question, and constituted unfair methods of competition.

Mr. Morton Nesmith for the Commission.

McKercher & Link, 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 parties named

in the caption hereof, and hereinafter described and referred to as respondents, have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Cup and Container Institute, Inc., is a nonprofit corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 2739 Graybar Building, 420 Lexington Avenue, in the city of New York, State of New York. Respondent Institute was organized on January 27, 1933, as a trade association for manufacturers of paper drinking cups and paper food containers.

Respondent, Dixie-Vortex Co. is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal offices and places of business located in the city of Chicago, State of Illinois, and the city of Easton, State of Pennsylvania.

Respondent, Lily-Tulip Cup Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business at 122 East Forty-second Street, city of New York, State of New York.

Respondent, Crystal Paper Service Corporation, is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business at 249 North Reno Street, in the city of Los Angeles, State of California. This company is a subsidiary of the respondent Lily-Tulip Cup Corporation.

Respondent, Herz Cup Co., is a division of Herz Manufacturing Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 840 East 134th Street, in the city of New York, State of New York.

Respondent, American Lace Paper Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin with its principal office and place of business located at 4425 North Port Washington Avenue, in the city of Milwaukee, State of Wisconsin.

Respondent, Milwaukee Lace Paper Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business at 1770 North Commerce Street, in the city of Milwaukee, State of Wisconsin.

Respondent, Eagle Cup 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 152 Imlay Street, in the city of Brooklyn, State of New York.

Respondent, The American Paper Goods Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located in the city of Kensington, State of Connecticut.

Respondent, Logan Drinking Cup Co., is a division of the United States Envelope Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal offices and places of business in the cities of Springfield and Worcester in the State of Massachusetts.

The respondent, Sutherland Paper Co., 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 in the city of Kalamazoo, State of Michigan.

Respondent, Sealright Co., Inc., is a corporation and division of the Oswego Falls Corporation, 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 in the city of Fulton, State of New York.

Respondent, Cupples-Hesse Envelope and Lithographing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 4189 King's Highway, Memorial Boulevard, in the city of St. Louis, State of Missouri.

The foregoing respondent corporations hereinafter referred to as corporate respondents, except respondent Cupples-Hesse Envelope and Lithographing Co., are now, or at some time since 1935 have been members of the respondent Cup and Container Institute, Inc., hereinafter referred to as respondent Institute. Cupples-Hesse Envelope and Lithographing Co. although not a member of said respondent Institute has cooperated with the officers, directors, and members thereof in the activities hereinafter set forth.

Respondent, Granville P. Rogers, named herein as an individual and as president and executive director of respondent Institute, has his principal office and place of business located at 2739 Graybar Building, 420 Lexington Avenue, in the city of New York, State of New York.

Respondent, Dale H. Eckerman, named herein as an individual and as vice-president and director of said respondent Institute, has his principal office and place of business located at 2739 Graybar Build-

ing, 420 Lexington Avenue, in the city of New York, State of New York.

Respondent, K. L. Stoler, named herein as an individual and as secretary and director of said respondent Institute, has his principal office and place of business located at 2739 Graybar Building, 420 Lexington Avenue, in the city of New York, State of New York.

Respondent, Robert J. Kieckhefer, an individual named herein as a director of said respondent Institute has his principal office and place of business located at 4425 North Port Washington Avenue, in the city of Milwaukee, State of Wisconsin, the office of respondent American Lace Paper Co.

Respondent, William S. Bacon, an individual named herein as a director of said respondent Institute, has his principal office and place of business located in the offices of the respondent American Paper Goods Co., in the city of Kensington, State of Connecticut.

Respondent, Robert C. Fenner, an individual named herein as a director of said respondent Institute has his prinicpal office and place of business located in the offices of the respondent Dixie–Vortex Co., in the city of Chicago, State of Illinois.

Respondent, Alexander Herz, an individual named herein as a director of said respondent Institute has his principal office and place of business located at the office of respondent Herz Cup Co., 840 East One Hundred and Thirty-fourth Street, in the city of New York, State of New York.

Respondent, Henry Nias, is an individual named herein as a director of said respondent Institute and has his principal office and place of business located in the offices of the respondent Lily-Tulip Cup Corporation, at 122 East Forty-second Street in the city of New York, State of New York.

Respondent, E. W. Skinner, an individual named herein as a director of said respondent Institute, has his principal office and place of business located in the offices of the respondent Sealright Co., Inc., in the city of Fulton, State of New York.

Respondent, R. L. Allison, an individual named herein as a director of said respondent Institute has his principal office and place of business located in the offices of the respondent United States Envelope Co. (Logan Drinking Cup division), located in the city of Springfield, State of Massachusetts.

PAR. 2. All of the corporate respondents hereinbefore named are manufacturers of one or more of the following products: Paper drinking cups, paper food containers, ice cups, ice tubs, and related products, hereinafter referred to as products. Each of said corporate respondents sells and distributes its said products to franchise distributors,

wholesalers, jobbers, retailers, users, and other purchasers in the United States and causes said products, when sold, to be transported from its principal place of business as hereinbefore set out into and through the several States of the United States and the District of Columbia to such purchasers located at various points in the several States of the United States other than in the State of origin of such shipments and in the District of Columbia.

Said corporate respondents maintain and at all times mentioned herein have maintained a course of trade in said paper drinking cups, paper food containers, ice cups, ice tubs, and related products sold and distributed by them in commerce between and among the various States of the United States and the District of Columbia.

Prior to the adoption and use of the acts, practices and methods hereinafter alleged, these corporate respondents were in active and substantial competition with each other and with other members of the industry in the sale of their said products in commerce between and among the several States of the United States and in the District of Columbia and but for the acts and practices hereinafter alleged, such active and substantial competition would have continued.

The corporate respondents have been at all times mentioned herein and now are the dominant factors in the paper drinking cup and paper food container industry and control more than 60 percent of the output and sale of said products.

PAR. 3. Beginning with the formation of the respondent Institute in January of 1933 and subsequent to May 27, 1935, said corporate respondents for the purpose of suppressing, preventing, and eliminating all price competition among themselves and with and among all persons, firms, and corporations engaged in the manufacture and sale of said products in the United States, entered into and have since carried out understandings, agreements, combinations, and conspiracies through and by means of said respondent Institute, its aforesaid officers, executive director, and other directors by which understandings, agreements, combinations, and conspiracies they fixed and maintained uniform minimum prices for the aforesaid products.

PAR. 4. Pursuant to said understandings, agreements, combinations, and conspiracies and in furtherance of said corporate respondents acting through said respondent Institute, its officers, executive director, and other directors, have done and performed the following acts and things:

1. Agreed to fix and maintain and have fixed and maintained minimum prices at which their products are to be sold by said corporate respondents to the purchasers thereof.

2. Agreed upon and adhered to a schedule of minimum prices and uniform discounts, terms and conditions of sale, including maximum discounts and classification of customers applicable to the sale of said products by said corporate respondents.

3. Agreed to maintain and have maintained identical price lists on comparable products.

4. Agreed to change and have changed simultaneously the prices at which comparable products are to be sold in the United States.

5. Agreed to file and have filed with respondent Institute a schedule of prices including discounts and the terms and conditions of all sales at which said respondent corporations will and do sell said products.

6. Agreed that they would not deviate and have not deviated from their said prices, discounts, and terms and conditions of sale filed with respondent Institute.

7. Agreed to notify and have notified respondent Institute of any deviations from said price lists by anyone.

8. Agreed to publish and issued to their franchised distributors, wholesalers, and jobbers Public Business Price Lists and Public Business Policy Sheets in which the prices and terms of sale are uniform as among them as comparable products.

9. Agreed to maintain and do maintain a procedure for the introduction of new products by any member respondent or other manufacturer cooperating with said respondent Institute whereby, among other things, the prices and terms of sale at which such product is to be sold are furnished to said respondent Institute in advance of sale or offering for sale.

10. Offered uniform and identical bids on comparable products either directly or through their distributor agents to municipal, State, or Federal purchasing departments.

11. Employed and now employ other methods, means, and practices designed and intended to further and which have furthered the carrying out of said agreements, understandings, combinations, and conspiracies.

PAR. 5. In order to better effectuate the aforementioned understandings, agreements, combinations, and conspiracies said corporate respondents and those manufacturers cooperating with said Institute have:

1. Agreed upon a division of the products of the industry into nine different groups and classified their respective products falling within each group.

2. Filed with the Institute daily, weekly, monthly, or periodic statistics, including, among other things, contracts, invoices, and gross

or net sales in both dollars and in units for the previous month's operations.

PAR. 6. Respondent Institute through its president and executive director, Granville P. Rogers, and its vice-president, Dale H. Eckerman, respondents herein, has so supervised the activities of the corporate respondents and those manufacturers who cooperate with said Institute, by collecting from and disseminating among them information as to prices, discounts, terms and conditions of sale and other information used and useful in carrying out said understandings, and agreements, that as a result thereof, adherence to such agreed prices and terms of sale has been secured.

PAR. 7. Each of said corporate respondents and those manufacturers cooperating with said Institute acted in concert and cooperation with one or more of the other respondents and with respondent Institute in doing and performing the acts and things hereinabove alleged in furtherance of said undertakings, understandings, and agreements, and in concert and cooperation with each other in the doings of the acts and things hereinbefore alleged.

PAR. 8. Said agreements, combinations, understandings, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance of the purposes thereof, as hereinbefore alleged, have had and do have the effect of unduly and unlawfully restricting and restraining trade in commerce in said products between and among the several States of the United States and in the District of Columbia; of artificially enhancing prices to the consuming public and maintaining prices at artificial levels, and have otherwise deprived the public of the benefits that would flow from normal competition among and between the member respondents and those cooperating with them and said Institute; of eliminating competition, with the tendency and capacity of creating a monopoly in the sale of said products in said commerce in the member respondents and those cooperating with them and said Institute, and are all to the injury of the public and of competitors of said respondents and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 1940, issued and subsequently served its complaint in this proceeding upon the said respondents Cup & Container Institute, Inc., a corporation, its officers, Granville P. Rogers, president and executive director; Dale

H. Eckerman, vice-president, K. L. Stoler, secretary; and Robert J. Kieckhefer, William S. Bacon, Robert C. Fenner, Alexander Herz, Henry Nias, E. W. Skinner and R. L. Allison, its directors, and Dixie-Vortex Co., a corporation; Lily-Tulip Cup Corporation, a corporation; Crystal Paper Service Corporation, a corporation; Herz Cup Co., a Division of Herz Manufacturing Corporation, a corporation; American Lace Paper Co., a corporation; Milwaukee Lace Paper Co., a corportation; Eagle Cup Corporation, a corporation; the American Paper Goods Co., a corporation; Logan Drinking Cup Co., a Division of the United States Envelope Co., a corporation; Sutherland Paper Co., a corporation; Sealright Co., Inc., a corporation and Division of Oswego Falls Corporation, a corporation; Cupples-Hesse Envelope and Lithographing Co., a corporation; charging them with the use of unfair methods of competition in commerce in violation of said act. On the 1st day of April 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 the respondents and their counsel, McKercher & Link, and W. T. Kelley, chief counsel for 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, Cup and Container Institute, Inc., is a nonprofit corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 420 Lexington Avenue, in the city of New York, State of New York. Respondent Institute was organized on January 27, 1933, as a trade association for manufacturers of paper drinking cups and paper food containers.

Respondent, Dixie-Vortex Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal offices and places of business located in the city of Chicago, State of Illinois, and the city of Easton, State of Pennsylvania.

Respondent, Lily-Tulip Cup Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business at 122 East Forty-second Street, city of New York, State of New York.

Respondent, Crystal Paper Service Corporation, is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business at 3050 East Eleventh Street, in the city of Los Angeles, State of California. This company is a subsidiary of the respondent Lily-Tulip Cup Corporation.

Respondent, Herz Cup Co., is a division of Herz Manufacturing Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 840 East One Hundred and Thirty-fourth Street, in the city of New York, State of New York.

Respondent, American Lace Paper Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin with its principal office and place of business located at 4425 North Port Washington Avenue, in the city of Milwaukee, State of Wisconsin.

Respondent, Milwaukee Lace Paper Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business at 1306 East Minicke Avenue, in the city of Milwaukee, State of Wisconsin.

Respondent, Eagle Cup 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 152 Imlay Street, in the city of Brooklyn, State of New York.

Respondent, The American Paper Goods Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located in the city of Kensington, State of Connecticut.

Respondent, Logan Drinking Cup Co., is a division of the United States Envelope Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine with its principal offices and places of business in the cities of Springfield and Worcester in the State of Massachusetts.

The respondent, Sutherland Paper Co., 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 in the city of Kalamazoo, State of Michigan.

Respondent, Sealright Co., Inc., is a corporation and division of the Oswego Falls Corporation, 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 in the city of Fulton, State of New York.

Respondent, Cupples-Hesse Envelope and Lithographing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 4189 Kingshighway, in the City of St. Louis, State of Missouri.

The fore-going respondent corporations, except respondent Cupples-Hesse Envelope and Lithographing Co., are now, or at some time since 1935, have been members of the respondent Cup & Container Institute, Inc. The Cupples-Hesse Envelope and Lithographing Co., although not a member of said respondent Institute, has cooperated with the officers, directors, and members thereof and has participated in some of the activities hereinafter set forth. All of said respondent corporations will hereinafter be referred to as corporate respondents. The respondent Cup & Container Institute, Inc., will hereinafter be referred to as respondent Institute.

Respondent, Granville P. Rogers, named herein as an individual and as president and executive director of respondent Institute has his principal office and place of business located at 420 Lexington Avenue, in the city of New York, State of New York.

Respondent, Dale H. Eckerman, named herein as an individual and as vice-president and director of said respondent Institute has his principal office and place of business located at 420 Lexington Avenue, in the city of New York, State of New York.

Respondent, K. L. Stoler, named herein as an individual and as secretary and director of said respondent Institute has her principal office and place of business located at 420 Lexington Avenue, in the city of New York, State of New York.

Respondent, Robert J. Kieckhefer, an individual named herein as a director of said respondent Institute, has his principal office and place of business located at 4425 North Port Washington Avenue, in the city of Milwaukee, State of Wisconsin, the office of respondent American Lace Paper Co.

Respondent, William S. Bacon, an individual named herein as a director of said respondent Institute, has his principal office and place

of business located in the offices of the respondent American Paper Goods Co., in the city of Kensington, State of Connecticut.

Respondent, Robert C. Fenner, an individual named herein as a director of said respondent Institute, resides at 52 Church Street, Evanston, Ill. This respondent has, however, not been actively associated with the Institute, having resigned such position more than one year prior to the execution of this stipulation.

Respondent, Alexander Herz, a former director of respondent Institute is now deceased.

Respondent, Henry Nias, is an individual named herein as a director of said respondent Institute and has his principal office and place of business located in the offices of the respondent Lily-Tulip Cup Corporation at 122 East Forty-second Street, in the city of New York, State of New York.

Respondent, E. W. Skinner, an individual named herein as a director of said respondent Institute, has his principal office and place of business located in the offices of the respondent Sealright Co., Inc., in the city of Fulton, State of New York.

Respondent, R. L. Allison, an individual named herein as a director of respondent Institute, has his principal office and place of business located in the offices of the respondent United States Envelope Co. (Logan Drinking Cup Division), located in the city of Springfield, State of Massachusetts.

PAR. 2. All of the corporate respondents hereinbefore named are manufacturers of one or more of the following products: Paper drinking cups, paper food containers, ice cups, ice tubs, and related products, hereinafter referred to as products. Each of said corporate respondents sells and distributes its said products to one or more of the following franchise distributors, wholesalers, jobbers, retailers, users, and other purchasers in the United States and causes said products, when sold, to be transported from its principal place of business as hereinbefore set-out into and through the several States of the United States and in the District of Columbia to such purchasers located at various points in the several States of the United States other than in the State of origin of such shipments and in the District of Columbia.

Said corporate respondents maintain and at all times mentioned herein have maintained a course of trade in said paper drinking cups, paper food containers, ice cups, ice tubs, and related products sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

Prior to the adoption and use of the acts, practices, and methods hereinafter set-out, these corporate respondents were in active and

substantial competition with each other and with other members of the industry in the sale of their said products in commerce between and among the several States of the United States and in the District of Columbia, and but for the acts and practices hereinafter set-out, such active and substantial competition would have continued.

Since the year 1938 said corporate respondents have actively competed with each other and with other members of the industry in the sale of their products in commerce in and among the several States.

The corporate respondents have been at all times mentioned herein and now are the dominant factors in the paper drinking cup and paper food container industry and control more than 60 percent of the output and sale of said products.

PAR. 3. The respondent Institute was organized in January of 1933, and during the existence of the National Recovery Administration and subsequent to May 27, 1935, said corporate respondents and certain other manufacturers, cooperating with them and the respondent Institute entered into and have since carried out understandings and agreements, through and by means of said respondent Institute, its aforesaid officers, executive directors and other directors, by which understandings and agreements they fixed and maintained in many instances uniform minimum prices for some of the aforesaid products, and specifically:

Pursuant to agreement all of the corporate respondents have filed and now file with the respondent Institute their respective published price lists, discounts, and terms of sale, and for more than a year subsequent to the invalidation of the National Recovery Act in May 1935, they notified the respondent Institute of any deviation from their price lists by giving notice in writing five days prior to the effective date of such deviation. Since 1937 said corporate respondents have not notified the respondent Institute of deviations from their price lists. Pursuant to agreement, said corporate respondents also have filed and now file with the respondent Institute sample copies of their franchise, wholesaler, jobber, and user contract forms, and most of said corporate respondents file with respondent Institute their total individual dollar sales, except the respondent Cupples-Hesse Envelope and Lithographing Co., for the purpose of assessing dues and advising the members of the industry of the total dollar sales of the industry; also file with the Institute copies of invoices and other statistics. The respondent Institute maintains a bureau for the purpose of collecting and disseminating information of past volume, consumption, and other pertinent information concerning the industry.

Through custom in the trade and through action of the respondent Institute, all of the products in the paper drinking cup and paper food container industry have been classified into nine principal and distinct groups, primarily based upon the use to which the product is put, as follows:

Group 1. Drinking Cups—Cone and wedge shaped; also sampling and communion cups; Sizes, 5-oz. capacity or less.

Group 2. Drinking Cups—Flat bottom, pleated and two-piece; also sampling and communion cups, penny vendor and cocktail cups; Sizes, 5-oz. capacity or less.

Group 3. Soda Cups—Cone and flat bottom, pleated and two-piece; with or without seats for lids; Sizes 5-oz. to 18-oz.*

Sundae Dishes—Cone and flat bottom, pleated and two-piece; also chile bowls, beer cups, etc. Sizes, 4-oz. to 16-oz. capacity.

Group 4. Light Duty Food Containers (Single Wrap)—Flat bottom, pleated and two-piece; and cone and wedge-shaped ice cream cups; Sizes, ¾-oz. to 32-oz. capacity. (Does not include hot drink cups.)

Group 5. Heavy Duty Food Containers (Double Wrap and including some types of Single Wrap)—Flat Bottom one-piece and two-piece; hot drink cups, molded containers and heavy duty containers, including double wrap and also single wrap heavier than the Industry standards for Groups 3 and 4 products; Sizes, quarts and smaller in capacity.

Group 6. Resale Packages—Includes packages of all items packed for sale through retailers to ultimate consumer, such as drinking cups, soda cups, sundae dishes, hot drink cups, cocktail cups and souffle cups.

Type A—*"Full Margin" Packages.*

Type B—*"High Consumer-Value" Packages.*

Group 7. Souffle Cups or Ramekins—Flat bottom pleated; all sizes, whether white, colored, tinted, stock printed or fancy; includes souffles with or without seats for lids.

Group 8. Water Ice Cups—Cone and wedge shaped; flat bottom, pleated and two-piece; designed primarily for water ice purposes; Sizes 1, 2, 3, 4, and 5-oz. capacity.

Group 9. Tubs—Double Wrap Tubs or Containers—Sizes over 1 quart to 11½ lbs. in capacity.

On June 23, 24, and 25, 1937, representatives of the corporate respondents other than Cupples-Hesse Envelope and Lithographing Co., met in New York at a meeting of the respondent Institute, which meeting was attended by respondents, Granville P. Rodgers and Dale H. Eckerman, at which, among other things, a general price increase among the corporate respondents was discussed. On June 25, 1937, a general price increase by all corporate respondents was proposed, but met considerable opposition from the Group 4-B manufacturers. This opposition was based upon the fact that there had just been an in-

*The 5-oz. drinking cup, because of consumer use, is classified in both Groups 2 and 3.

crease in that group and they did not feel that the prices should be again raised at that time. The prices for Group 4–A (single wrap cups) could not be raised unless the prices for Group 4–B (double wrap cups) were raised a like amount. Otherwise the 4–A Group would cost more than the 4–B Group. The discussion continued both pro and con for several hours, and it was finally agreed that the prices on Group 1 (wedged-shaped water cups), Group 2 (office water cups), Group 3 (soda cups with covers or lids or with grooves for disk lids), and Group 5 cups be increased 15 percent.

Whereupon a telegram was put together by representatives or sales managers of the corporate respondents other than the respondents, Sealright Co., Inc., and Cupples-Hesse Envelope and Lithographing Co., who did not manufacture or sell the products to which the said telegram applied, piece by piece, and at 3 o'clock in the afternoon the following telegram was agreed upon:

ALL PRICES IN GROUP ONE TWO THREE AND FIVE ARE WITHDRAWN IMMEDIATELY AND ONLY ORDERS POSTMARKED PRIOR TO MIDNIGHT JUNE TWENTY FIFTH WILL BE ACCEPTED AT OLD LEVEL STOP NEW PRICE LIST WILL BE MAILED IN ABOUT TEN DAYS STOP TO PREVENT THE STOPPING OF BOOKING ORDERS WE WILL ACCEPT ORDERS BY ADDING FIFTEEN PERCENT TO PRESENT PRICES WITH AGREEMENT THAT IF LATER PUBLISHED PRICE IS LOWER THAN OLD PRICE PLUS FIFTEEN PERCENT INVOICES WILL BE ADJUSTED TO NEW PUBLISHED PRICE LEVEL.

Then all the sales managers of the corporate respondents, other than the Sealright Co., Inc. and Cupples-Hess Envelope and Lithographing Co., rewrote this telegram in some slight degree, carrying the full sense as set forth above, and transmitted it to their respective offices so that telegrams could be sent to all jobbers, distributors, and regular customers that same night. Typical of such telegrams are the following from corporate respondents, Dixie-Vortex Co., Logan Drinking Cup Co., and American Paper Goods Co., to their respective distributors, jobbers, and customers:

POSTAL TELEGRAPH

ER148 G 57 NL

PID Easton Penn Jun 25 1937

V. A. Dirvin
Paper Manufacturers Co. Inc.
Fifth & Willow Sts. Phila.

Prices are withdrawn immediately on all items in groups one two three and five stop orders postmarked June twenty fifth or before are being honored at present prices stop pending release of new schedules in about ten days orders will be honored at prices fifteen percent above present prices subject to adjustment to new schedules when issued.

DIXIE VORTEX COMPANY.

WESTERN UNION TELEGRAPH

1937 Jun 26

PM 9 75 NL—Worcester Mass. June 25
Paper Manufacturers Co. Inc.
Fifth & Willow Sts.

All prices on Ajax and Aero Cups are withdrawn immediately and only orders post marked prior to midnight June 25 will be accepted at old prices stop new price lists will be mailed in about 10 days stop Orders will be accepted by adding fifteen percent to present prices with the understanding that if our new published prices are lower than old prices plus fifteen percent invoices will be adjusted to new published price level.

LOGAN DRINKING CUP DIV.

WESTERN UNION

1937 June 26 A. M. 4:14

Geo W Millar
NYC

All prices in groups one two and three round cups withdrawn immediately stop orders postmarked June 25th will be accepted at old prices stop new price lists with approximate fifteen percent increase will be mailed promptly stop orders received in meantime will be priced at this approximate schedule and if any later published list is lower proper adjustment will be made to the published list.

THE AMERICAN PAPER GOODS CO.

This general price increase of 15 percent was not only put into effect by the corporate respondents, through and by means of said respondent Institute, but was rigidly adhered to by all of such corporate respondents in a majority of instances. The corporate respondents Sealright Co., Inc. and Cupples-Hesse Envelope and Lithographing Co., and the individual respondent, E. W. Skinner, did not manufacture and sell the products to which such increased price applied and did not participate in such activity.

Most of corporate respondents distribute their products through what is known as franchise distributors. Such franchise distributor can be described as a quantity purchaser of said products, who resells them to other wholesalers, jobbers, retailers, or users and does not purchase such products for his, its, or their own use. In most instances, in order to obtain a franchise distributor classification, it is necessary to purchase in one shipment a minimum of 500,000 drinking cups. This minimum purchase entitled such franchise distributors to this classification and fill-in privileges for a period of 6 months from the date of such purchase. At the end of this period, should the franchise distributor not reclassify by again purchasing the minimum of 500,000 drinking cups, he, they, or it revert to what is known as a wholesaler classification. If such franchise distributor does reclassify in the above manner, such reclassification entitles him,

them, or it to the franchise distributor status for another period of 6 months.

Each corporate respondent issues a Public Business Price List and a Public Business Policy Sheet. These lists are sent, in the majority of cases, to franchise distributors. In placing bids on Federal, State, county, or municipal business, all franchise distributors, and in some instances wholesalers, act as agents for the corporate respondents in quoting prices as set forth by their respective principals, in accordance with the price lists, above described. These price lists are identical, or substantially so, among all the corporate respondents and constitute the franchise distributor price. Such price is the lowest individual price at which the members of the Industry sell their products. If the franchise distributors or wholesalers file a lower price on Federal, State, county, or municipal business, they would be selling at a loss. If they do file, in accordance with the prices quoted by their respective principals, they receive, if they have been successful in obtaining the bid, a commission of 7½ percent for their efforts, but in actual practice the manufacturers usually accept the business at the prices quoted by the franchise distributors without any deduction from the 7½ percent. As a result, in the majority of cases uniform and identical prices are quoted to Federal, State, county, and municipal governments, and likewise there is no price competition, as distinguished from promotional and service competition, between franchise distributors or wholesalers in many instances for this business.

The city of New York requested bids on paper drinking and medicinal cups, which bids were opened on November 25, 1936. Upon the opening of these bids it was found that 27 out of 28 bidders had quoted identical prices. The one remaining bidder who quoted a lower price withdrew his bid and stated as his reason therefor that he had made an error in the submission thereof. Corporate respondents Herz Cup Company, Dixie-Vortex Company and American Lace Paper Company and franchise distributors constituted all of the bidders on this occasion.

The city of Philadelphia, Pa., on January 12, 1937, received from corporate respondent, Dixie-Vortex Co. and four franchise distributors, bids which were identical in price, discount, and terms of sale. Likewise, the city of Milwaukee, Wis., on May 15, 1936, received identical bids from corporate respondent American Lace Paper Company and four franchise distributors; on July 21, 1937, the city of Los Angeles, Calif., received identical bids from four franchise distributors; and on July 1, 1936, the city of San Francisco, Calif., received identical bids from 13 franchise distributors.

The Procurement Division of the Treasury Department of the United States Government requested bids for drinking cups, which bids were to have been opened at 10:00 a. m., October 19, 1937, and which upon the opening thereof showed that from 17 bidders the price, discount and terms of sale quoted were identical. Corporate respondents American Lace Paper Co., Herz Cup Co., and Lily-Tulip Cup Corporation and 13 franchise distributors constituted all of the bidders on this occasion.

Among and typical of excerpts from letters, bulletins and sales instructions from some of the corporate respondents to their franchise distributors and wholesalers are the following:

The following prices are for use in *Governmental* bids, whether federal, State, or local. These prices should be in line with those offered by our principal competitors.

* * * * * * *

As a franchise distributor you are asked to cooperate in the observance of three schedules, which are as follows: For Group 2—No. 300—ID, government bids; No. 300—IC, user contract; and No. 300—IA, jobber single delivery. These several schedules are enclosed for your convenience although you may have already received copies of them.

* * * * * * *

Inasmuch as we are securing the cooperation of other manufacturers and distributors in stabilizing federal, State, county and municipal bids, we are asking you to please be governed by the enclosed schedule when you have occasion to bid on drinking cup business. * * * P. S. Should you run into any deviation from these prices please get in touch with us at once.

* * * * * * *

This year, we are requesting all who bid out cups in Public Business to cooperate in following our recommended schedules which are attached. Please note that the terms of Public Business are 2%, 30 days. To the successful bidder of American cups on the basis of these prices we will pay a commission of 7½%. To be fair to our trade no commissions will be paid on bids which are lower than our suggested Public Business Schedule.

* * * * * * *

The following prices are for use in bidding on Governmental business, whether federal, State or local. These prices are to be in line with those offered by our principal competitors. These prices are for political units only. Use them until further notice.

* * * * * * *

The bids on drinking cups from competitor sources should be in line with our prices inasmuch as we have secured the cooperation of other manufacturers and distributors as a means to stabilizing this business. Should you or your distributors run into any deviation from these prices, please write or send us a full report at once.

Respondent Institute maintains a procedure for the introduction of a new product by any corporate respondent or other manufacturer cooperating with respondent Institute, primarily for the purpose of

ascertaining whether the said product would comply with various Governmental laws and regulations with reference to the products of the industry, and, in one instance, respondent Institute has requested corporate respondents, and manufacturers cooperating with it, to withhold the sale and quotation of prices of such new product until such product had been classified into a particular group and its price furnished to respondent Institute in advance of sale. In this instance, the request has been granted and the sale and quotation of prices withheld until agreed upon.

CONCLUSION

The acts and practices of 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 among respondents in the sale of paper drinking cups, paper food containers, ice tubs, and similar products in commerce, within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained trade and commerce in paper drinking cups, paper food containers, ice tubs, and similar products, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission issued herein on February 17, 1940, the joint answer of the respondents and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein, except respondents Robert C. Fenner and Alexander Herz, 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, Dixie-Vortex Co., Lily-Tulip Cup Corporation, Crystal Paper Service Corporation, Herz Cup Co., American Lace Paper Co., Milwaukee Lace Paper Co., Eagle Cup Corporation, The American Paper Goods Co., Logan Drinking Cup Co., Sutherland Paper Co., Sealright Co., Inc., Cupples-Hesse En-

velope and Lithographing Co., their officers, representatives, agents, and employees, cease and desist from entering into or carrying out any understanding, agreement, combination, or conspiracy, between and among any two or more of said respondents or between any one or more of said respondents and any other members of the industry, through or by means of said respondent Institute or otherwise for the purpose or with the effect of restricting, restraining, monopolizing or eliminating competition in the sale in interstate commerce of paper drinking cups, paper food containers, paper ice cups, paper ice tubs, and similar products, and as a part of such understanding, agreement, combination and conspiracy, from doing any of the following acts or things:

1. Agreeing to fix and maintain, or fixing and maintaining uniform or minimum prices.

2. Agreeing upon anl adhering to a schedule of uniform prices and uniform discounts, terms and conditions of sale, including maximum discounts.

3. Agreeing to maintain or maintaining pursuant to agreement identical price lists on comparable products.

4. Agreeing to change or changing simultaneously the price for comparable products.

5. Agreeing to file, or filing pursuant to agreement, a schedule of prices, including discounts and the terms and conditions of sale.

6. Agreeing not to deviate from their prices filed with respondent Institute, including discounts and terms and conditions of sale.

7. Agreeing to notify or notifying respondent Institute of any deviations from said filed prices by anyone.

8. Agreeing to publish and issue, or publishing and issuing to their distributors Public Business Price Lists and Public Business Policy Sheets, or any list or sheet in which the prices and terms of sale are uniform as among respondents or any other manufacturer of the products of the industry as to comparable products.

9. Agreeing to maintain or maintaining a procedure for the introduction of new products by any member respondent or other manufacturer cooperating with said respondent Institute whereby the prices and terms of sale at which said product is to be sold are furnished to said respondent Institute in advance of sale or offering for sale.

10. Agreeing to offer or submit, or offering or submitting pursuant to agreement, uniform and identical bids on comparable products either directly or through their distributor agents to municipal, State, and Federal purchasing departments.

11. Agreeing to file or filing with respondent Institute pursuant to agreement, daily, weekly, monthly, or periodic statistics, including,

among other things, contracts, invoices, and gross or net sales in both dollars and in units for the previous month's operations.

It is further ordered, That the respondent, Cup and Container Institute, Inc., a corporation, its officers, agents, and employees, and the respondents, Granville P. Rogers, Dale H. Eckerman, K. L. Stoler, Robert J. Kieckhefer, William S. Bacon, Henry Nias, E. W. Skinner, and R. L. Allison, or their successors, cease and desist from entering into or carrying out any understanding, agreement, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and any other member or members of the industry for the purpose, or with the effect of, restricting, restraining, monopolizing, or eliminating competition in the sale in interstate commerce of paper drinking cups, paper food containers, paper ice cups, paper ice tubs, and similar products, and from aiding, abetting, or encouraging or cooperating with the respondent members hereinbefore named in doing any of the acts and things prohibited by this order, or more particularly, collecting from, or disseminating among said member respondents, or any member of the respondent, Cup and Container Institute, Inc., or anyone in the paper drinking cup or paper food container industry, any information as to prices, terms, and conditions of sale prior to their publication date.

It is further ordered, That the respondents, Granville P. Rogers and Dale H. Eckerman, cease and desist supervising, policing, or in anywise intimidating members of the industry in an attempt to induce such members to become a party to any understanding, agreement, combination, or conspiracy or to maintain prices, terms and conditions of sale in furtherance of any such understanding, agreement, combination or conspiracy.

It is further ordered, That the complaint herein be and the same hereby is dismissed as against the respondents Robert C. Fenner and Alexander Herz.

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

IN THE MATTER OF

PRIMROSE HOUSE, INC., AND DELV, LIMITED

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

Docket 3314. Complaint, Jan. 26, 1938—Decision, Dec. 18, 1940

Where a corporation engaged in interstate sale and distribution, and second concern, its wholly owned subsidiary, engaged in manufacture, and similar sale and distribution, of various cosmetics, including "Delv Skin Cream," in active and substantial competition with others engaged in similar sale and distribution of such products—

Represented through various kinds of advertising media, such as radio broadcasts and printed matter circulated among prospective purchasers in various States and in the District of Columbia, that their said "Delv" contained an ingredient which acted on the skin as the natural fluids and served same purpose as such fluids, and would rid the skin of wrinkles, and large and unsightly pores, and would nourish and rejuvenate the skin and create new skin texture and keep face young and complexion beautiful;

Facts being that said cream contained no ingredient which acted on skin as natural fluids thereof, and would not serve same purpose as said fluids, or nourish or rejuvenate skin, or create new texture of skin, which is nourished or fed by blood stream and condition and appearance of which are determined by many factors, including general health, condition of blood and exposure to various external conditions, and said cream would not keep face young or skin beautiful, or remove wrinkles or large unsightly pores or any other imperfections from the skin, or keep complexion beautiful and skin free from imperfections, which cannot be produced by means of cosmetic alone;

With effect of misleading and deceiving substantial portion of purchasing public into mistaken and erroneous belief that such representations were true, and as result of such belief, thus engendered, of inducing substantial portion of said public to purchase said skin cream, and of thereby diverting trade to themselves from their competitors, who do not practice such deception; to the substantial injury of said competitors in said commerce and to the injury 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 in commerce and unfair and deceptive acts and practices therein.

Before *Mr. W. W. Sheppard* and *Mr. Randolph Preston*, trial examiners.

Mr. DeWitt T. Puckett for the Commission.

Mr. Charles P. G. Fuller, of Chadbourne, Hunt, Jaeckel & Brown, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commis-

sion, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Primrose House, Inc., a corporation, and Delv, Limited, a corporation, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Primrose House, Inc., is a Delaware corporation, organized August 31, 1926, and doing business at 111 Eighth Avenue, New York, N. Y. Respondent, Delv, Limited, is a New York corporation, organized November 11, 1936, and doing business at 76 Ninth Avenue, New York, N. Y. The respondent, Delv, Limited, is a wholly owned subsidiary of respondent, Primrose House, Inc., which controls and directs its policies and practices. Both of said corporations are engaged in the manufacture, sale, and distribution of cosmetics.

When orders are received for their cosmetics, respondents ship the products from their respective places of business in New York, N. Y., to the purchasers thereof located in the various States of the United States, other than the State of New York, and in the District of Columbia. There is now, and has been for several years last past, a course of trade in commerce, in said cosmetics sold and distributed by respondents, between and among the various States of the United States and in the District of Columbia.

Respondents are now, and at all times mentioned herein have been, in 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. 2. In aid of the sale of one of their products, a skin cream now designated as Delv, the respondents in the course and conduct of their business as aforesaid have stated, and still state, through various types of advertising media such as periodicals having an interstate circulation, by radio broadcasts, and in various other ways, as follows:

I'll tell you what I am going to share with you—and that is a little tip on how to keep your face young and your complexion beautiful. I told you a few minutes ago about the rapidity with which DELV—DELV—DELV All-purpose Cream cleanses, lubricates and clarifies.

It cleanses, nourishes, clarifies all in one.

All those tell-tale wrinkles seem smoothed and ironed out and large unsightly pores seem to fade away and vanish.

You see the vital oils and ingredients in DELV are blended on a new cosmetic principle.

DELV is absolutely different from anything else you have ever used—different from anything else you can buy—because it is made with an ingredient new to the cosmetic industry. The vital oils in DELV are blended together and then whipped.

Respondents also use other advertisements containing the same statements or other statements of similar import and effect. The above statements are merely illustrative.

The respondent, Primrose House, Inc., also has advertised said cream as follows:

* * * DELV is a delightful new cream that literally creates a new skin texture * * *.

Smart women who have used it are enthusiastic about its * * * stimulating effect. Its regular daily use keeps the skin * * * young and vital * * *.

It * * * nourishes, clarifies and tends to rejuvenate. * * * It penetrates * * * leaving the skin vitally refreshed and youthful looking.

DELV—rejuvenates.

DELV * * * was created by Primrose House after long research to find an ingredient that duplicates the natural oil of the skin.

DELV is based upon a new cosmetic principle for it contains a precious new beauty ingredient. This ingredient, called "Triactin" has the same action on the skin as the skin's own gland fluids that keep it young and vital.

PAR. 3. By means of the foregoing statements and other statements of similar import and effect not herein set out in detail, the respondents have represented and now represent to purchasers, prospective purchasers, and the public generally that their said skin cream will keep the face young and the complexion beautiful and that it will nourish the skin. They further represent that said cream will cause wrinkles and unsightly pores to fade away or vanish from the skin; that said cream is manufactured or blended on a new cosmetic principle; that it contains an ingredient new to the cosmetic industry; and that said cream is different from anything else on the market.

The respondent, Primrose House, Inc., has also represented among other things that said cream will create a new skin texture and will keep the skin young and vital; that it will nourish and rejuvenate the skin; that it contains a new ingredient which has the same action on the skin as the skin's own gland fluids and duplicates the natural oil of the skin.

In truth and in fact, respondents' said cream will not keep the face young and the complexion beautiful. It will not nourish and rejuvenate the skin which obtains its food from and is nourished by the blood stream as are the other parts of the body. It will not cause wrinkles and unsightly pores to fade away or vanish from the skin and it will not create a new skin texture. Said facial cream is not manufactured or blended on a new cosmetic principle; it does not contain an ingredient new to the cosmetic industry and it is not abso-

lutely different from anything else on the market. Delv does not contain a new ingredient which acts on the skin as the skin's own gland fluids and it does not serve the same purpose as the natural oil of the skin.

PAR. 4. The use by respondents of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that such representations are true and into the purchase of substantial quantities of said cream because of such erroneous beliefs.

There are among the competitors of respondents, as mentioned in paragraph 1 hereof, manufacturers and distributors of cosmetics who do not misrepresent the beneficial uses and qualities, method of manufacture, or composition of their respective products, and who likewise sell and distribute cosmetics in commerce among and between the various States of the United States and in the District of Columbia. By use of the representations aforesaid trade has been, and is now being, unfairly diverted to respondents from their said competitors. Thereby substantial injury is being and has been done by respondents to competition in commerce as herein set out.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 26, 1938, issued and subsequently served its complaint in this proceeding upon respondents, Primrose House, Inc., a corporation, and Delv, Limited, a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and 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 Charles P. G. Fuller, attorney for the respondents, before W. W. Sheppard and Randolph Preston, 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, Primrose House, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and has its office and principal place of business at 111 Eighth Avenue, New York, N. Y. It is now and has been for several years last past engaged in the sale and distribution of various cosmetics, including a skin cream sold under the trade name "Delv."

The respondent, Delv, Limited, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and its principal office and place of business are located at 76 Ninth Avenue, New York, N. Y. It is now and has been for several years last past engaged in the manufacture and in the sale and distribution of various cosmetics, including the said skin cream Delv. Respondent, Delv, Limited, is a wholly owned subsidiary of the respondent, Primrose House, Inc.

The respondents cause their said products, including the aforesaid skin cream, when sold, to be transported from their aforesaid places of business in New York, N. Y., to purchasers thereof located in various States of the United States and in the District of Columbia. During all the time mentioned herein, respondents have maintained a course of trade in said cosmetics in commerce between and among the various States of the United States and in the District of Columbia.

During all the time mentioned herein, respondents have been in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of cosmetics in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Primrose House Sales Co., Inc., a wholly owned subsidiary of respondent, Primrose House, Inc., with identical officers and directors, was engaged in the sale and distribution of said skin cream, Delv, as aforesaid, from January 1934 to May 1935, at which time it was dissolved and its assets were taken over and utilized by

its parent company, Primrose House, Inc. During the period of existence of said Primrose House Sales Co., Inc., its policies and practices were dominated and controlled by respondent, Primrose House, Inc.

During the time mentioned above and in the course and conduct of its business, as aforesaid, Primrose House Sales Co., Inc., in promoting the sale of the skin cream, Delv, advertised said cream by means of various kinds of advertising media such as radio broadcasts and by printed matter circulated among prospective purchasers of said cream located in various States of the United States and in the District of Columbia. Typical of and among the various representations used as aforesaid are the following:

* * * DELV is a delightful new cream that literally creates a new skin texture * * *.

Smart women who have used it are enthusiastic about its * * * stimulating effect. Its regular daily use keeps the skin * * * young and vital * * *.

It * * * nourishes, clarifies and tends to rejuvenate. * * * It penetrates * * * leaving the skin vitally refreshed and youthful looking.

DELV—rejuvenates.

DELV * * * was created by Primrose House after long research to find an ingredient that duplicates the natural oil of the skin.

DELV is based upon a new cosmetic principle, for it contains a precious new beauty ingredient. This ingredient, called "Triactin," has the same action on the skin as the skin's own gland fluids that keep it young and vital.

PAR. 3. In May 1935 Primrose House Sales Co., Inc., entered into a stipulation with the Federal Trade Commission by which it agreed to abandon the use of certain allegedly false representations in connection with the sale of the said skin cream, Delv. Among the representations which Primrose House Sales Co., Inc., agreed, by the aforesaid stipulation, to abandon are the following:

1. That the unhealthy functioning of an oily skin will be corrected through the daily use of said face cream, or that it will correct the cause of any ailment of the skin.
2. That said face cream will nourish the skin.
3. That said face cream will make or keep the skin young or vital.
4. That said face cream tends to or will bring new life to the skin.

Said company also agreed to cease and desist from making any other claims or assertions of like import.[1]

PAR. 4. Nothwithstanding the aforesaid agreement to cease and desist the respondents have, since May 1935, in promoting the sale of the said cream, Delv, advertised said cream by means of various kinds of advertising media such as radio broadcasts and by printed

[1] 20 F. T. C. 678.

matter circulated among prospective purchasers of said cream located in various States of the United States and in the District of Columbia. Typical of and among the various representations used by respondents as aforesaid are the following:

I'll tell you what I am going to share with you—and that is a little tip on how to keep your face young and your complexion beautiful. I told you a few minutes ago about the rapidity with which DELV—DELV—DELV All-purpose Cream cleanses, lubricates and clarifies.

It cleanses, nourishes, clarifies all in one.

All those tell-tale wrinkles seem smoothed and ironed out and large unsightly pores seem to fade away and vanish.

You see the vital oils and ingredients in DELV are blended on a new cosmetic principle.

DELV is absolutely different from anything else you have ever used—different from anything else you can buy—because it is made with an ingredient new to the cosmetic industry. The vital oils in DELV are blended together and then whipped.

PAR. 5. By the use of the aforesaid representations, and others of similar import but not set out herein, the respondents have represented, among other things, that their said skin cream, Delv, contains an ingredient which acts on the skin as the natural fluids of the skin and that it serves the same purpose as such fluids; that it will rid the skin of wrinkles, large and unsightly pores, and other imperfections; that it will nourish and rejuvenate the skin and that it will create a new skin texture; and that it will keep the face young and the complexion beautiful.

PAR. 6. The Commission finds that the respondents' said cream, Delv, does not contain any ingredient which acts on the skin as the natural fluids of the skin, and that said cream will not serve the same purpose as such fluids. Said cream will not nourish or rejuvenate the skin or create a new skin texture. The skin is nourished or fed by the blood stream and the condition and appearance of the skin are determined by many factors, including the general health, the condition of the blood, and exposure to various external conditions. Said cream will not keep the face young or the skin beautiful, nor will it remove wrinkles or large unsightly pores or any other imperfections from the skin. A beautiful complexion or a skin free from imperfections cannot be produced by the use of a cosmetic alone.

PAR. 7. The use by respondents of the foregoing false and misleading statements and representations 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' said skin cream "Delv" as a result of such erroneous and mistaken belief. In consequence, trade

has been diverted unfairly to respondents from their competitors in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice 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 W. W. Sheppard and Randolph Preston, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein (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, Primrose House, Inc., a corporation, and Delv, Limited, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' cosmetic preparation designated "Delv" 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:

1. Representing that respondents' preparation acts on the skin as the natural fluids of the skin, or that it serves the same purpose as the natural fluids of the skin.

2. Representing that said preparation will cause wrinkles, large or unsightly pores, or other imperfections to disappear from the skin.

3. Representing that said preparation will nourish or rejuvenate the skin or that it will create a new skin texture.

4. Representing that said preparation will keep the face young or the complexion beautiful.

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

GEORGE W. BRENNER AND JOHN M. KURTZ, DOING BUSINESS AS PATENT SPECIALTIES COMPANY

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

Docket 4336. Complaint, Oct. 9, 1940—Decision, Dec. 18, 1940

Where two individuals engaged in manufacture of their Magic Wand Welder and of their Super Magic Wand Welder, and in interstate sale thereof; in advertising their said devices through trade publications and circulars—

(*a*) Represented that their said Magic Wand Welder was a heavy-duty welder which was of practical use in shop welding and a device which would generate sufficient heat when connected with an automobile storage battery to prepare materials for welding, facts being it was not such a heavy-duty device, but was light and flimsy in construction and would not, connected to such a battery, generate sufficient heat when used according to instructions to prepare any material for proper welding; and

(*b*) Represented that their said Super Magic Wand Welder was a tool built for use and useful for heavy-duty in welding base metals of all kinds, and more particularly, cylinder blocks and heavy parts of mechanical and farm machinery, and that it would heat such metals to such an extent so that they would run and a proper weld could be effected, and that its construction was sturdy enough to withstand such hard use and electric current necessary for such welding, facts being it was not a heavy-duty tool, but was very flimsy and weakly constructed, wires were small gauge and easily overheated, and clamps were light weight with cheap, inferior fasteners, and it was not built for heavy electric welding, was not compact and efficient, and heat generated thereby was insufficient, except on extremely thin metals and not over 1/16 of an inch in thickness, to do satisfactory welding job;

(*c*) Represented, furthermore, that said Super Magic Wand Welder conformed in design and construction to standard required for such devices, and was safe to operate on ordinary AC or DC branch household circuit, and that operation thereof would not injure either operator or branch electric current to which attached, and that it was a safe and efficient device to use in securing a "sun tan" on the skin, facts being register units were poorly housed and not securely fastened to wood ends of case; tubes leading from handles were of light, inferior material and not insulated for safety to operator; and in other respects it did not conform to standard methods of design or construction of electric devices from viewpoint of suitability of materials or proper guarding and spacing of live electrical parts, so as reasonably to safeguard life and property; flimsy construction thereof made it difficult to safeguard operator from shock; use thereof would in fact necessitate special wiring; it was extremely dangerous both to anyone using it and to wiring of any ordinary house circuit to which it might be attached, and could not be operated with safety; wiring supplied therewith was too light to prevent dangerous heating, and while flame produced by carbon arc of device would burn the skin and produce so-

called "sun tan," such use by novice in use of violet rays, with no further instructions, might result in severe injury to eyes and skin; and

(*d*) Represented that they would give each purchaser of their said Magic Wand welding device a full kit of welding supplies "free," facts being kit of such supplies represented by them as being "free" with each purchase was not thus given and as a gratuity, but was regularly offered as part of a combination offer and price thereof included in original sale price quoted in the advertisements;

With effect of misleading and deceiving substantial portion of purchasing public into mistaken and erroneous belief that such false and misleading representations and implications were true, and of causing substantial portion of such public, because of said belief, to purchase their said devices:

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.

Complaint

Pursuant to the provisions of the Federal 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. Brenner and John M. Kurtz, individuals, trading and doing business under the firm name of Patent Specialties 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 are individuals trading and doing business under the firm name Patent Specialties Co., with their principal office and place of business at 1060 Julia Street, Teaneck, N. J. Respondents are now and for more than 2 years last past have been engaged in the manufacture and sale of two devices, one known as the Magic Wand Welder and the other known as the Super Magic Wand Welder, designed and intended to be used in welding different kinds of metals, using electric current as the heating agency. Respondents cause said devices, when sold, to be transported from their place of business in the State of New Jersey to purchasers thereof located at various points in the several 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 devices 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 their business in said commerce as aforesaid, and for the purpose of inducing the purchase of their

electric welders, respondents have circulated among prospective purchasers of said devices, through advertisements placed in trade publications and advertisements in the form of circulars, many statements concerning the efficiency and merits of the said devices. Among the statements so used and circulated among the prospective purchasers by the respondents with reference to the Magic Wand Welder are the following:

"MAGIC WAND" Genuine heavy duty! Electric arc Welder. Free! Full kit! $1.49. Service for life.

WELD—Don't solder! A welded job stays. That's why the Magic Wand Welder is so popular. Pays for itself on the first two or three jobs! Clip to auto circuit or any storage battery. Easily adapted to house current. Guaranteed for life! Welds all metals in all forms. *Rugged*, fool proof, yet finely balanced . . . the perfect instrument for man, woman or boy. Practical for home tinkering or shop production. Beware of imitations! This is not a substitute for welding. This IS Welding! Dealers! Inventors! Garage men! INVESTIGATE!

FREE—With every purchase of Magic Wand Lifetime Welder. Full kit of welding supplies including steel, bronze and aluminum welding rods, all necessary welding flux, high grade welding carbons, instruction booklet and numerous money making ideas (welding jobs pay up to $1.00 an inch) to multiply your trivial investment a thousand fold! All for $1.49 . . . rush your order today!

NOW—Throw away the soldering iron! Anyone can do a professional welding job with the *Magic Wand*. Can be clipped fast directly to your automobile circuit, operates on any storage battery, or easily adapted to your house current. Welds all metals in any form! Magic Wand Welder is guaranteed for life! *Rugged*, fool proof, yet finely balanced . . . the perfect instrument for man or boy. Practical for home tinkering or shop production. Beware of imitations! This is not a substitute for welding. This is welding! Dealers! Inventors! Garage men! Investigate!

Among the statements so used and circulated among prospective purchasers with reference to the Super Magic Wand Welder are the following:

The "Super MAGIC WAND WELDER" for house current! Complete only $2.98 with full supplies.

WELDING. Most sensational tool in 20 years, *Super Magic Wand Welder* weighs only one pound, fits pocket, easy to handle! No generator, no transformer, no batteries, no special wiring! Plug into ANY LIGHT SOCKET! Handle remains cool! With this rugged heavy duty tool anyone can weld iron, steel, bronze, brass, lead, aluminum, or ANY metal, under the terrific electric flame. Use this marvel WELDER three different ways! First and foremost, it welds all metals! TWO extra uses—as a brilliant photographic flood light—to give a 'sun tan' for the skin!

FREE! With every Super Magic Wand Welder you get kit of welding supplies. Bronze, steel and aluminum welding rods; welding flux, pair of genuine "protectosite" glareproof goggles, instruction papers, and money making ideas! All complete for $2.98. Satisfaction guaranteed or money refunded immediately.

WELDING—Brazing and soldering on AC or DC house current. Super Magic Wand Welder is a heavy-duty tool built for easy electric welding, brazing and

soldering. Just plug in on any AC or DC house current socket. Light, compact, efficient! No generator, no transformer, no batteries, no special wiring! Anyone can weld iron, steel, bronze, brass, lead, aluminum, any metal! Cylinder-blocks, fenders, tanks, farm machinery, or any type of job. WELD ANY METAL IN SHOP OR HOME. Only $5.98—with WELDER you get FREE kit of supplies—bronze, steel, aluminum welding rods; welding flux, genuine welding goggles! Also complete instructions and money-making ideas.

Through the use of the foregoing statements and others of similar import and meaning not herein set out, the respondents represent and imply that the Magic Wand Welder is a genuine heavy-duty device which will, when connected with an ordinary automobile storage battery, weld all base metals in any form, and that it is practical for such use in home tinkering and shop production; that respondents give each purchaser of said device a full kit of welding supplies free, and as a gratuity.

Through the use of the foregoing statements, and others of similar import and meaning, not herein set out, the respondents represent and imply that the Super Magic Wand Welder is a tool built for use and useful for heavy duty in welding base metals of all kinds, and more particularly cylinder blocks and heavy parts of mechanical or farm machinery; that it will heat such metals to such an extent that they will run so that a proper weld can be effected; that its construction is sturdy enough to withstand such hard use and the electric current necessary for such welding; that it conforms in design and construction to the standard required for such devices; that it is safe to operate on an ordinary AC or DC branch electric household circuit; that the operation of such device will not injure the operator or the branch electric current to which it is attached; that it is a safe and efficient device to use in securing a "sun tan" on the skin.

PAR. 3. The above and foregoing representations and implications relative to the Magic Wand Welder are false, misleading, and deceptive, for in truth and in fact such welder is not a heavy-duty device but on the contrary is light and flimsy of construction and will not, when connected to an automobile storage battery, generate sufficient heat when used according to instructions to prepare any metal for proper welding. The kit of welding supplies represented by the respondents as being "free," with each purchase of said device, is not given "free" and as a gratuity, but is part of the combination offer, and the price thereof is included in the original sale price of $1.49.

The above and foregoing representations and implications relative to the Super Magic Wand Welder are false, misleading, and decep-

tive, for in truth and in fact said device is not a heavy-duty welding tool, but on the contrary is very flimsy and weak in construction—the wires being of small gauge and easily overheated, the clamps of light weight connected with cheap, inferior fasteners; the resister units are poorly housed and not securely fastened to the wood ends of the case; the tubes leading from the handles are of light, inferior materials and are not insulated for safety to operators; the screw holes in the handles are so thin that a screw will not remain permanently therein so as securely to hold the electrodes. Said device does not conform to the standard methods of design or construction of electrical devices from the viewpoint of suitability of materials used or proper guarding and spacing of live electrical parts so as reasonably to safeguard life and property. Said device is not built for heavy electric welding, nor is it compact or efficient. Because of its flimsy construction it does not safeguard the operator from shock. The heat generated is insufficient, except on extremely thin materials, not over 1/16 of an inch in thickness, to do a good job of welding. Its use does necessitate special wiring, the wiring supplied with the outfit being too light to prevent dangerous heating. It is extremely dangerous, both to the user and to the wiring of any ordinary house circuit, and it cannot be operated with safety. While the flame produced by the carbon arc would burn the skin and produce so-called "sun tan," such use by a novice in the use of the violet ray, with no further instructions, might result in severe injury to the eyes and skin.

PAR. 4. The use by the respondents of the foregoing false and misleading representations and implications, respecting their said devices as to the efficiency, construction, and safety of operation thereof, 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 devices.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 9th day of October 1940, issued, and subsequently served, its complaint in this proceeding upon the

respondents, George W. Brenner and John M. Kurtz, charging them 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 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 therfrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, George W. Brenner and John M. Kurtz, are individuals trading and doing business under the firm name of Patent Specialties Co., with their principal office and place of business at 4020 Tenth Avenue, New York, N. Y. Respondents are now, and for more than two years last past have been, engaged in the manufacture and sale of two devices, one known as the Magic Wand Welder and one known as the Super Magic Wand Welder, designed and intended to be used in welding different kinds of metals, using electric current as the heating agency. Respondents cause said devices, when sold, to be transported from their place of business in the State of New York to purchasers thereof located at various points in the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business in said commerce as aforesaid, and for the purpose of inducing the purchase of their electric welders, the respondents have circulated among prospective purchasers of said devices, through advertisements placed in trade publications and advertisements in the form of circulars, many statements concerning the efficiency and merits of said devices. Among these statements so used and circulated among the prospective purchasers by the respondents with reference to the "Magic Wand" welding device are the following:

"*MAGIC WAND*" Genuine heavy duty! Electric arc welder. Free! Full kit! $1.49. Service for life.

WELD—Don't solder! A welded job stays. That's why the Maagic Wand Welder is so popular. Pays for itself on the first two or three jobs! Clip to auto circuit or any storage battery. Easily adapted to house current. Guaranteed for life! Welds all metals in all forms. *Rugged*, fool proof, yet finely balanced * * * the perfect instrument for man, woman or boy. Practical for home tinkering or shop production. Beware of imitations! This is not a substitute for welding. This IS Welding! Dealers! Inventors! Garage men! INVESTIGATE!

FREE—With every purchase of Magic Wand Lifetime Welder. Full kit of welding supplies including steel, bronze and aluminum welding rods, all necessary welding flux, high grade welding carbons, instruction booklet and numerous money making ideas (welding jobs pay up to $1.00 an inch) to multiply your trivial investment a thousand fold! All for $1.49 * * * rush your order today!

Now—Throw away the soldering iron! Anyone can do a professional welding job with the *Magic Wand.* Can be clipped fast directly to your automobile circuit, operates on any storage battery, are easily adapted to your house current. Welds all metals in any form! Magic Wand Welder is guaranteed for life! *Rugged,* fool proof, yet finally balanced * * * the perfect instrument for man or boy. Practical for home tinkering or shop production. Beware of imitations! This is not a substitute for welding. This is welding! Dealers! Inventors! Garage men! Investigate!

Among the statements so used and circulated among prospective purchasers with reference to the "Super Magic Wand" welding device are the following:

The "Super MAGIC WAND WELDER" for house current! Complete only $2.98 with full supplies.

WELDING. Most sensational tool in 20 years, Super Magic Wand Welder weighs only one pound, fits pocket, easy to handle! No generator, no transformer, no batteries, no special wiring! Plug into ANY LIGHT SOCKET! Handle remains cool! With this rugged heavy duty tool anyone can weld iron, steel, bronze, brass, lead, aluminum, or ANY metal, under the terrific electric flame. Use this marvel WELDER three different ways! First and foremost, it welds all metals! Two extra uses—as a brilliant photographic flood light—to give a "sun tan" for the skin.

FREE! With every Super Magic Wand Welder you get kit of welding supplies. Bronze, steel and aluminum welding rods; welding flux, pair of genuine "protectosite" glareproof goggles, instruction papers, and money making ideas! All complete for $2.98. Satisfaction guaranteed or money refunded immediately.

WELDING—Brazing and soldering on AC or DC house current. Super Magic Wand Welder is a heavy-duty tool built for easy electric welding, brazing and soldering. Just plug in on any AC or DC house current socket. Light, compact, efficient! No generator, no transformer, no batteries, no special wiring! Anyone can weld iron, steel, bronze, brass, lead, aluminum, any metal! Cylinder-blocks, fenders, tanks, farm machinery or any type of job. WELD ANY METAL IN SHOP OR HOME. Only $5.98—With WELDER you get FREE kit of supplies—bronze, steel, aluminum welding rods; welding flux, genuine welding goggles! Also complete instructions and money-making ideas.

Through the use of the foregoing statements the respondents represent and imply that the "Magic Wand" welding device is a "genuine" heavy-duty device which will, when connected with an ordinary automobile storage battery, weld all base metals in any form, and that it is practical for such use in home tinkering and shop production; that respondents give each purchaser of said device a full kit of welding supplies "Free," and as a gratuity.

Through the use of the foregoing statements the respondents represent and imply that the "Super Magic Wand" device is a tool built for use and useful for heavy duty in welding base metals of all kinds, and more particularly, cylinder blocks and heavy parts of mechanical and farm machinery; that it will heat such metals to such an extent that they will run so that a proper weld can be effected; that its construction is sturdy enough to withstand such hard use and the electric current necessary for such welding; that it conforms in design and construction to the standard required for such device; that it is safe to operate on an ordinary AC or DC branch electric household circuit; that the operation of such device will not injure either the operator or the branch electric current to which it is attached; that it is a safe and efficient device to use in securing a "sun tan" on the skin.

PAR. 3. The above and foregoing representations and implications relative to the "Magic Wand" welding device are false, misleading, and deceptive, for in truth and in fact, said welder is not a heavy-duty device, but, on the contrary, is light and flimsy of construction and will not, when connected to an automobile storage battery, generate sufficient heat, when used according to instructions, to prepare any material for proper welding. The kit of welding supplies represented by the respondents as being "free" with each purchase of said device is not given free and as a gratuity, but is regularly offered as a part of a combination offer, and the price thereof is included in the original sale price quoted in the advertisements.

The above and foregoing representations and implications relative to the "Super Magic Wand" welding device are false, misleading, and deceptive, for in truth and in fact, it is not a heavy-duty tool; on the contrary, it is very flimsy and weakly constructed, the wires being small gauge and easily overheated, the clamps being light weight with cheap, inferior fasteners. The register units are poorly housed and not securely fastened to the wood ends of the case, the tubes leading from the handles being of light, inferior material, not insulated for safety to operators, and the screw holes in the handles are so thin that a screw will not remain permanently so as to securely hold the electrodes. It does not conform to standard methods of design or construction of electrical devices from the viewpoint of suitability of materials nor proper guarding and spacing of live electrical parts so as to reasonably safeguard life and property. It is not built for heavy electric welding, nor is it compact and efficient; because of its flimsy construction it is difficult to safeguard the operator from shock, and the heat generated is insufficient, except on extremely thin metals, not over 1/16 of an inch in thickness, to do a satisfactory job of welding. Its use does necessitate special wiring and the wiring supplied

with the outfit is too light to prevent dangerous heating. It is extremely dangerous both to anyone using it and to the wiring of any ordinary house circuit to which it might be attached, and it cannot be operated with safety. While the flame produced by the carbon arc of this device would burn the skin and produce so-called "sun tan," such use by a novice in the use of violet rays, with no further instructions, might result in severe injury to the eyes and skin.

PAR. 4. The use by the respondents of the foregoing false and misleading representations and implications respecting their said devices has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations and implications are true, and causes a substantial portion of the purchasing public, because of said mistaken and erroneous belief, to purchase said devices.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all 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 respondents have violated the Federal Trade Commission Act.

It is ordered, That the respondents, George W. Brenner and John M. Kurtz, their representatives, agents, and employees, jointly and severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of the electric welding devices now known as and sold under the name "Magic Wand Welder" and "Super Magic Wand Welder," whether sold under said names, or any other names or name, or in connection with the offering for sale, sale, and distribution of any other welding device of similar construction, 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 "Magic Wand" welder is a heavy-duty welder, which is of practical use in shop welding.

2. That said "Magic Wand" welder will generate sufficient heat, when connected with an automobile storage battery, to prepare materials for welding.

3. That said "Super Magic Wand" welder conforms to the standard method of design or construction for electrical devices, either as to the suitability of materials used or as to the proper guarding and spacing of "live" electric parts.

4. That said "Super Magic Wand" welder is a heavy-duty welder or that it is useful in welding heavy mechanical and farm machinery, such as cylinder blocks.

5. That said "Super Magic Wand" welder may be used on ordinary alternating or direct branch electrical household circuits, without injury either to the operator of the welder or to the household circuit to which it is attached.

6. That said "Super Magic Wand" welder may be used with safety and efficiency in "sun tanning" the skin.

7. That welding supplies, offered regularly as part of a combination offer, are free or a gift or gratuity.

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

AUGUSTA KNITTING CORPORATION

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

Docket 4162. Complaint, June 13, 1940—Decision, Dec. 19, 1940

Where a corporation engaged in manufacture of tuck stitch garments, sweaters, underwear, bathing suits, and other knitted garments and in interstate distribution and sale thereof to various wholesale and retail dealer-purchasers—

(*a*) Represented, as typical of acts and practices engaged in, that certain ladies' undergarments, were composed of mixture of silk and wool through labels, tags, and markers attached thereto, and including label reading "50% SILK AND WOOL," or so reading, but with figures 27 percent under words "Silk and Wool," facts being word "and" on labels in question was printed in minute type and in such manner as to be illegible to all practical intents and purposes, notation 27 percent appearing underneath words "Silk and Wool" in second label was in much smaller type than the "50%" appearing above said words, and was contradictory to label itself and would not be noticeable to purchasing public or understood by it, and knitted undergarments thus labeled were not composed entirely of silk and wool, but contained cotton content ranging from 45 percent to 50 percent;

(*b*) Represented that its garments had longer wearing qualities than those knit by its competitors through use, as typical, of such labels "Self-reinforced for 97% longer wear" and "97% Longer Wear," facts being said undergarments did not have longer wearing qualities than garments of equivalent price and quality sold by competitors, and use, as aforesaid, of such statements and representations was false, deceptive and misleading; and

(*c*) Failed to disclose by appropriate labels, brands, or tags attached to said garments all of fiber constituents from which they were made and to disclose as substantial constituent thereof, existence of cotton;

With result that through said labels members of purchasing public were misled into believing that said undergarments, thus labeled, were composed entirely of silk and wool in the proportion of 50 percent silk and 50 percent wool, and with effect, through use by it of representations above set forth, of misleading and deceiving substantial portion of purchasing public into erroneous belief that (1) knitted garments sold and distributed by it were composed entirely of silk and wool, fabrics of which have established reputation as possessing superior cold-resistance and other desirable qualities over those containing substantial amounts of cotton, and, as consequence are decidedly preferred by many purchasers and prospective purchasers of undergarments over fabrics containing cotton in substantial amounts, and that (2) said garments were of longer wearing quality than similar products made by competitors, and to cause said portion of public to purchase such products as result of said erroneous beliefs, engendered as above set forth:

Held, That said 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. Thomas L. Wilder, of Utica, 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 Augusta Knitting Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Augusta Knitting Corporation, is a corporation organized and existing under the laws of the State of New York, and having an office and principal place of business in the city of Utica, in the State of New York, and a sales office at 180 Madison Avenue, in the city and State of New York.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of manufacturing, distributing, and selling tuck stitch garments, sweaters, underwear, bathing suits, and other knitted garments. In the course and conduct of its business, respondent sells said garments to various wholesale and retail dealers and causes such garments, when sold, to be transported from its aforesaid places 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 garments 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 practices of falsely representing the constituent fiber or material of which the various products sold and distributed by it are made, by means of false representations on labels attached to its products. Among and typical of such acts and practices the respondent represents that certain ladies' knitted undergarments manufactured, sold, and distributed by it are composed of a mixture of silk and wool, by means of labels, tags, and markers attached to said garments which designate and describe said products. One of such labels reads:

50%

SILK AND WOOL

Another of such labels reads:

50%

SILK AND WOOL

27% 27%

The word "and" on the above labels is printed in minute type and in such manner as to be illegible to all practical intents and purposes. On the second label the notation "27%" appearing underneath the words "Silk and Wool" is in much smaller type than the "50%" appearing above the words "Silk and Wool."

By means of the above labels, members of the purchasing public are misled into believing that the said undergarments so labeled are composed entirely of silk and wool in the proportion of 50 percent silk and 50 percent wool. The use on certain labels of "27%" in fine print is contradictory to the label itself and would not be noticeable to the purchasing public or understood by it.

In truth and in fact the knitted undergarments so labeled are not composed entirely of silk and wool but contain a cotton content ranging from 45 to 57 percent.

PAR. 4. In addition to the above labels the respondent represents that its garments have longer wearing qualities than garments manufactured by its competitors. Typical of such representations is the use of the following labels:

Self-reinforced for
97% longer wear

97% Longer Wear

The use by the respondent of the above statements and representations on its labels is false, deceptive, and misleading. In truth and in fact respondent's knitted undergarments do not have longer wearing qualities than garments of equivalent price and quality sold and distributed by its competitors.

PAR. 5. In addition to the acts and practices hereinabove set out the respondent fails to disclose by appropriate labels, brands or tags attached to its said garments all of the fiber constituents from which said garments are made, and fails to disclose the existence of cotton as a substantial constituent of said garments.

PAR. 6. Fabrics made of a mixture of wool and silk fibers have established a reputation as possessing superior cold-resistant and other desirable qualities over fabrics which contain substantial amounts of cotton. In consequence, many purchasers and prospective purchasers of undergarments have a decided preference for silk and wool fabrics over fabrics containing substantial amounts of cotton.

PAR. 7. The use by the respondent of the representations hereinabove 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 erroneous belief that the knitted garments sold and distributed by the respondent are composed entirely of silk and wool and are of longer wearing quality than similar garments manufactured by com-

petitors, and to cause them to purchase said products as a result of such erroneous beliefs 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 June 13, 1940, issued and subsequently served its complaint in this proceeding upon respondent, Augusta Knitting Corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on 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, Augusta Knitting Corporation, is a corporation organized and existing under the laws of the State of New York, and having an office and principal place of business in the city of Utica, in the State of New York, and a sales office at 180 Madison Avenue, in the city and State of New York.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of manufacturing, distributing and selling tuck stitch garments, sweaters, underwear, bathing suits, and other knitted garments. In the course and conduct of its business, respondent sells said garments to various wholesale and retail dealers and causes such garments, when sold, to be transported from its aforesaid places 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

garments 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 practices of falsely representing the constituent fiber or material of which the various products sold and distributed by it are made, by means of false representations on labels attached to its products. Among and typical of such acts and practices the respondent represents that certain ladies' knitted undergarments manufactured, sold and distributed by it are composed of a mixture of silk and wool, by means of labels, tags, and markers attached to said garments which designate and describe said products. One of such labels reads:

50%

SILK AND WOOL

Another of such labels reads:

50%

SILK AND WOOL

27% 27%

The word "and" on the above labels is printed in minute type and in such manner as to be illegible to all practical intents and purposes. On the second label the notation "27%" appearing underneath the words "Silk and Wool" is in much smaller type than the "50%" appearing above the words "Silk and Wool."

By means of the above labels, members of the purchasing public are misled into believing that the said undergarments so labeled are composed entirely of silk and wool in the proportion of 50 percent silk and 50 percent wool. The use on certain labels of "27%" in fine print is contradictory to the label itself and would not be noticeable to the purchasing public or understood by it.

In truth and in fact the knitted undergarments so labeled are not composed entirely of silk and wool but contain a cotton content ranging from 45 to 57 percent.

PAR. 4. In addition to the above labels the respondent represents that its garments have longer wearing qualities than garments manufactured by its competitors. Typical of such representations is the use of the following labels:

Self-reinforced for
97% longer wear.

97% Longer Wear

The use by the respondent of the above statements and representations of its labels is false, deceptive, and misleading. In truth and

in fact respondent's knitted undergarments do not have longer wearing qualities than garments of equivalent price and quality sold and distributed by its competitors.

PAR. 5. In addition to the acts and practices hereinabove set out the respondent fails to disclose by appropriate labels, brands, or tags attached to its said garments all of the fiber constituents from which said garments are made, and fails to disclose the existence of cotton as a substantial constituent of said garments.

PAR. 6. Fabrics made of a mixture of wool and silk fibers have established a reputation as possessing superior cold-resistant and other desirable qualities over fabrics which contain substantial amounts of cotton. In consequence, many purchasers and prospective purchasers of undergarments, have a decided preference for silk and wool fabrics over fabrics containing substantial amounts of cotton.

PAR. 7. The use by the respondent of the representations hereinabove 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 erroneous belief that the knitted garments sold and distributed by the respondent are composed entirely of silk and wool and are of longer wearing quality than similar garments manufactured by competitors, and to cause them to purchase said products as a result of such erroneous beliefs 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 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, Augusta Knitting 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 knitted garments in commerce, as "com-

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

1. Representing in any manner or by any means that respondent's products are composed of fibers or materials other than those of which such products are actually composed.

2. Using the term "silk" or the term "wool" or any other terms indicative of either silk or wool to describe or designate any fabric or product which is not composed entirely of silk or entirely of wool, provided that in the case of a fabric or product composed in part of silk or wool and in part of materials other than silk or wool such terms or similar terms may be used as descriptive of the silk or wool content, as the case may be, when immediately accompanied by a word or words accurately describing and designating each constituent fiber or material thereof in letters of equal size or conspicuousness in the order of its predominance by weight, beginning with the largest single constituent.

3. Representing in any manner or by any means that the fabrics or products offered for sale or sold by respondent contain wool or silk in greater quantity or percentage than is actually the case.

4. Representing that respondent's products have longer wearing qualities than garments of equivalent price and quality ordinarily and customarily sold in the usual course of business; or that the quality, grade, material or character of respondent's products are superior to or different from the actual quality, grade, material or character of such products.

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

It is further ordered, That no provisions contained in this order shall be construed as authorizing or permitting, after July 14, 1941, the labeling of any wool product in any manner other than in strict conformity with the provisions of the "Wool Products Labeling Act of 1939."

IN THE MATTER OF

JESSE W. ALLRED AND ROBERT A. ALLRED, TRADING UNDER THE NAME OF ALLRED BROTHERS CANDY CO.

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

Docket 4244. Complaint, Aug. 20, 1940—Decision, Dec. 19, 1940

Where two individuals 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 the consumers thereof, and included (1) number of bars of candy, together with push card for use in sale and distribution of said bars to purchasing public under a plan in accordance with which purchaser secured bar without cost, or for 1, 2, or 3 cents as determined by his chance receipt of letter "O" or number 1, 2, or 3, through disk selected on card, and (2) various other assortments involving lottery or chance feature and methods of sale and distribution similar to that above described from which they varied in detail only;

Sold said assortments along with such push cards to retailers by whom as direct or indirect purchasers they were exposed and sold to purchasing public in accordance with aforesaid sales plan or methods, 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, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of their candies in accordance with such 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 sales plans or methods involving a game of chance or sale of a chance to win something by a 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 said sales plans or methods employed by them in sale and distribution thereof and by element of chance involved therein and were thereby induced to buy their candy in preference to that offered and sold by their said competitors who do not use same or equivalent sales plans or methods and with effect, through use of said sales plans or methods by them and because of said game of chance, of diverting unfairly trade to them from their competitors aforesaid who do not use same 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.

Before *Mr. W. W. Sheppard*, 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 Jesse W. Allred and Robert A. Allred, individually and trading under the name of Allred Brothers Candy 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, Jesse W. Allred and Robert A. Allred, are individuals trading under the name of Allred Brothers Candy Co., with their principal office and place of business located at 515 West Palmer Street, Charlotte, N. C. Respondents are now and for more than 1 year last past have been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondents cause and have caused said candy, when sold, to be shipped or transported from their 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 respondents in such candy in commerce between and among various States of the United States. 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 candy in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have 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 the 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, 2, or 3 cents therefor is thus determined wholly by lot or chance.

The respondents manufacture, sell, and distribute 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 respondents' 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. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale and distribution of their candy in accordance with the sales plans or methods hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their candy, and the sale of said candy by and through the use thereof, and by the aid of said sales 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 respondents, 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 respondents in the sale and distribution of their candy, and the element of chance involved therein, and are thereby induced to buy respondents' candy in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent sales plans or methods. The use of said sales plans or methods by respondents because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondents from their said competitors who do not use the same or equivalent sales plans or methods and 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.

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 August 20, 1940, issued and thereafter served its complaint in this proceeding upon respondents, Jesse W. Allred and Robert A. Allred, individually and trading under the name of Allred Brothers Candy 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 December 2, 1940, 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 this proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Jesse W. Allred and Robert A. Allred, are individuals trading under the name of Allred Brothers Candy Co., with their principal office and place of business located at 515 West Palmer Street, Charlotte, N. C. Respondents are now and for more than 1 year last past have been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondents cause and have caused said candy, when sold, to be shipped or transported from their 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 respondents in such candy in commerce between and among various States of the United States. 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 candy in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have 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 the 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, 2, or 3 cents therefor is thus determined wholly by lot or chance.

The respondents manufacture, sell, and distribute 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 respondents' 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. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale and distribution of their candy in accordance with the sales plans or methods hereinabove found. The use by respondents of said sales plans or methods in the sale of their candy, and the sale of said candy by and through the use thereof, and by the aid of said sales 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 found, 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 respondents, 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 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 respondents in the sale and distribution of their candy, and the element of chance involved therein, and are thereby induced to buy respondents' candy in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent sales plans or methods. The use of said sales plans or methods by respondents because of said game of chance has a tendency and capacity to, and does, unfairly divert substantial trade to respondents from their 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 respondents to competition in commerce between and among 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 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, Jesse W. Allred and Robert A. Allred, individually and trading under the name of Allred Brothers Candy Co., or trading under any other name or names, their representatives, agents, or 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 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 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. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

J. T. TARLTON, TRADING AS J. T. TARLTON 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 4256. Complaint, Aug. 22, 1940—Decision, Dec. 19, 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 candy bars together with a push card for use in sale and distribution of said bars under a plan in accordance with which the purchaser paid 1, 2, 3, 4, or 5 cents for bar, value of which was worth more than some of said amounts to be paid therefor, in accordance with number pushed by chance from card, and (2) various other assortments of candy involving lottery or chance feature and method of sale and distribution similar to that above described and varying therefrom in detail only;

Sold such assortments along with said push card to dealers or retailers by whom as direct or indirect purchasers they were exposed and sold to purchasing public, in accordance with aforesaid sales plan involving game of chance or sale of chance to procure candy bar at price much less than normal retail price thereof, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale and distribution of candy 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 sales plans or methods involving a game of chance or sale of a chance to win something by a 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 said sales plans or methods employed by him in sale and distribution thereof and by element of chance involved therein, and were thereby induced to buy his candy in preference to that offered and sold by his said competitors who do not use same or equivalent sales plans or methods, and with effect, through use of said sales plans and methods by him and because of said game of chance, of diverting unfairly trade to him from his competitors aforesaid who do not use same 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.

Before *Mr. W. W. Sheppard*, 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 J. T. Tarlton, individually and trading as J. T. Tarlton 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. The respondent, J. T. Tarlton, is an individual trading under the name of J. T. Tarlton Candy Co., with his principal office and place of business located in Marshville, 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 the 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 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 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 number 1, 2, 3, 4, or 5, and the persons pushing the disks containing either number 1, 2, 3, 4, or 5 pay in cents the amount of the number 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. All of said

bars are worth more than some of said amounts to be paid therefor. Whether a purchaser receives a bar of candy for 1, 2, 3, 4, or 5 cents 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, 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 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 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 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 at a price much less than the normal retail price thereof. Many persons, firms, or 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 22, 1940, issued and thereafter served its complaint in this proceeding upon respondent J. T. Tarlton, individually and trading as J. T. Tarlton 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 December 2, 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 proceedure 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 FACT

Paragraph 1. The respondent, J. T. Tarlton, is an individual trading under the name of J. T. Tarlton Candy Co., with his principal office and place of business located in Marshville, 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 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 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 number 1, 2, 3, 4, or 5, and the persons pushing the disks containing either number 1, 2, 3, 4, or 5 pay in cents the amount of the number 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. All of said bars are worth more than some of said amounts to be paid therefor. Whether a purchaser receives a bar of candy for 1, 2, 3, 4, or 5 cents 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, 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 his candy in accordance with the sales plans or methods hereinabove found. 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 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 candy to the purchasing public, in the manner above found, involves a game of chance or the sale of a chance to procure a bar of candy at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and 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 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 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 answer of the respondent, in which answer the respondent admits all 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 J. T. Tarlton, individually and trading as J. T. Tarlton 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 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 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. 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 the service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

T. A. WARD, CARR WARD, AND WILMA WARD, TRADING AS MINETREE 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 4285. Complaint, Aug. 29, 1940—Decision, Dec. 19, 1940

Where three individuals who were engaged, in Poplar Bluff, in conducting brokerage business, and of whom two were president and secretary-treasurer of Ward Stores, Inc., and Poplar Bluff Wholesale Grocery Co., and owned and controlled 98 percent and 88 percent, respectively, of outstanding capital stock of said corporations, doing business in southeastern Missouri, and of whom third was employed by other two to render services of an executive nature to their enterprises, and particularly those above named—

Received and accepted brokerage fees and commissions, which consisted of certain percentage, and usually from 2½ to 5 percent, of sales prices of purchases placed by said Wholesale Grocery Co. with sellers, mostly located in other States, and through said brokerage firm, and constituting substantial portion of goods, wares, and merchandise, and particularly foodstuffs, required in ordinary conduct of its business by said Wholesale Grocery Co., and which were transmitted and paid by sellers to said brokers or brokerage firm on transactions in question, in all of which transactions three individuals involved acted in fact for and on behalf of such Wholesale Grocery Co.:

Held, That in accepting and receiving brokerage fees or commissions consisting of certain percentage, and usually from 2½ to 5 percent, of sales prices upon purchases of commodities of such Wholesale Grocery Co. in interstate commerce, as above set forth, said individuals, individually and trading as brokerage company, violated provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. P. C. Kolinski for the Commission.

Mr. Lawrence E. Tedrick, of Poplar Bluff, Mo., 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 (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. Respondents, T. A. Ward and Wilma Ward, are individuals residing in the city of Poplar Bluff, Mo. Said respondents, T. A. Ward and Wilma Ward, own and control 88 percent

of the outstanding capital stock of the Poplar Bluff Wholesale Grocery Co. and 98 percent of the outstanding capital stock of Ward Stores, Inc., which operates a chain of 44 retail stores located in southeastern Missouri. Said T. A. Ward and Wilma Ward are, respectively, president and secretary-treasurer of these companies.

PAR. 2. Respondent Carr Ward is an individual residing in the city of Poplar Bluff, Mo. This respondent is engaged with respondents T. A. Ward and Wilma Ward in the brokerage business under the trade name Minetree Brokerage Co. with an office and principal place of business located in Poplar Bluff, Mo.

Respondent Carr Ward is the son of respondent T. A. Ward and the husband of respondent Wilma Ward, and is now employed by said respondents T. A. Ward and Wilma Ward to render services of an executive nature to various enterprises owned and controlled by said respondents T. A. Ward and Wilma Ward, particularly the Poplar Bluff Wholesale Grocery Co. and Ward Stores, Inc.

PAR. 3. Poplar Bluff Wholesale Grocery Co. places orders for a substantial portion of the goods, wares, and merchandise, particularly foodstuffs by it 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 Poplar Bluff Wholesale Grocery Co. is located, through the brokerage firm of T. A. Ward, Wilma Ward, and Carr Ward trading as Minetree Brokerage 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 Poplar Bluff Wholesale Grocery Co.

PAR. 4. In the course and conduct of the buying and selling transactions hereinabove referred to, resulting in the delivery of goods, wares, merchandise, particularly foodstuffs, in interstate commerce from one or more sellers to said Poplar Bluff Wholesale Grocery Co., sellers have transmitted and paid, and do transmit and pay, to the brokerage firm of T. A. Ward, Wilma Ward, and Carr Ward, trading as Minetree Brokerage Co., brokerage fees or commissions, the same being a certain percentage (usually from 2½ percent to 5 percent) of the sales price 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 T. A. Ward, Wilma Ward, and Carr Ward, trading as Minetree Brokerage Co., upon the purchases of Poplar Bluff Wholesale Grocery Co. in the manner hereinabove described in substantial amounts.

PAR. 5. In all of the transactions of purchase and sale hereinabove referred to, the respondents T. A. Ward, Wilma Ward, and Carr Ward have acted in fact for and on behalf of the Poplar Bluff Wholesale Grocery Co.

PAR. 6. The transmission and payment of brokerage fees and commissions by sellers to said respondents T. A. Ward, Wilma Ward, and Carr Ward as members of the brokerage firm trading as Minetree Brokerage Co., and the receipt and acceptance of such brokerage fees and commissions by said respondents T. A. Ward, Wilma Ward, and Carr Ward upon the purchases of the Poplar Bluff Wholesale Grocery Co., 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 29th day of August 1940, issued and served its complaint in this proceeding upon respondents T. A. Ward, Carr Ward, and Wilma Ward, charging the respondents 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 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, had 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. The respondents T. A. Ward and Wilma Ward are individuals residing in the city of Poplar Bluff, Mo., and they own and control 88 percent of the outstanding capital stock of the Poplar

Bluff Wholesale Grocery Co., and 98 percent of the outstanding capital stock of Ward Stores, Inc., corporations doing business in southeastern Missouri. T. A. Ward and Wilma Ward are respectively president and secretary-treasurer of these companies.

PAR. 2. The respondent Carr Ward is an individual residing in the city of Poplar Bluff, Mo., and is employed by respondents T. A. Ward and Wilma Ward to render services of an executive nature to enterprises owned and controlled by them, particularly the Poplar Bluff Wholesale Grocery Co. and Ward Stores, Inc.

PAR. 3. The Minetree Brokerage Co. is a firm engaged in the brokerage business with an office and principal place of business in Poplar Bluff, Mo., and is owned by respondents T. A. Ward, Carr Ward, and Wilma Ward.

PAR. 4. Poplar Bluff Wholesale Grocery Co. 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 Poplar Bluff Grocery Co. is located, through the brokerage firm of T. A. Ward, Carr Ward, and Wilma Ward, trading as Minetree Brokerage 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 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 Poplar Bluff Wholesale Grocery Co.

PAR. 5. In the course and conduct of the buying and selling transactions hereinabove referred to, resulting in the delivery of goods, wares, and merchandise, particularly foodstuffs, in interstate commerce from one or more sellers to said Poplar Bluff Wholesale Grocery Co., sellers have transmitted and paid, and do transmit and pay, to the brokerage firm of T. A. Ward, Carr Ward, and Wilma Ward, trading as Minetree Brokerage 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 T. A. Ward, Carr Ward, and Wilma Ward, trading as Minetree Brokerage Co., upon the purchases of the Poplar Bluff Wholesale Grocery Co. in the manner hereinabove described in substantial amounts.

PAR. 6. In all of the transactions of purchase and sale hereinabove referred to, the respondents T. A. Ward, Carr Ward, and Wilma

Ward are the agents, and have acted in fact for and on behalf of the Poplar Bluff Wholesale Grocery Co.

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 the purchases of commodities of the Poplar Bluff Wholesale Grocery Co., in interstate commerce as set forth in the foregoing findings as to the facts, the respondents T. A. Ward, Carr Ward, and Wilma Ward, individually and while trading under the firm name and style of Minetree Brokerage 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearings as to said facts, and the Commission being of the opinion 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), and having made its report, stating its findings as to the facts and its conclusion.

It is ordered, That the respondents, T. A. Ward, Carr Ward, and Wilma Ward, individually and trading under the firm name and style of Minetree Brokerage Co., or any other name, their agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. Accepting or receiving from sellers, directly or indirectly, in connection with the purchase of commodities in interstate commerce by the Poplar Bluff Wholesale Grocery Co. under the facts and circumstances as set forth in paragraph 6 of the findings of fact, 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 or receiving from sellers, directly or indirectly, in connection with the purchase of commodities in interstate commerce by any person, partnership, firm, or corporation, in connection with which purchases said individuals, acting as intermediaries or agents, are subject to the direct or indirect control, or act in fact for or in behalf,

of any of said purchasers, 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.

It is further ordered, That the said respondents T. A. Ward, Carr Ward and Wilma Ward shall within 60 days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinabove set forth by the Commission.

IN THE MATTER OF

MILTON S. LONG, TRADING AS WALTON TRAINING BUREAU

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

Docket 4346. Complaint, Oct. 11, 1940—Decision, Dec. 26, 1940

Where an individual engaged in interstate sale and distribution of correspondence courses of study and instruction, to prepare students for certain United States civil service examinations; in advertising his said courses through newspapers circulating among the general public in various States, and through printed advertising matter mailed to prospective students throughout the United States—

(*a*) Represented that positions in the United States Government were immediately available, that he could secure positions for students of his courses, and that examinations would be held frequently, and that starting salaries were greater than was the case, through such statements, among others, as "MEN WANTED. Work for the Government. Salaries $1,700-$2,600 Per Year. No layoffs! Vacations with pay! Pensions! Railway Postal Clerk, City Mail Carrier, BE Post Office Clerk, Rural Mail Carrier. Do not wait for examination dates to be announced. Prepare Yourself Now! We are so certain that our simple course will eventually bring about your appointment that we are willing to wait for our tuition fee until you are appointed and working. * * *," and "Railway Postal Clerk, City Mail Carrier, Post Office Clerk and Rural Mail Carrier examinations are held frequently in different cities in the United States";

Facts being there were no positions immediately available in the Postal Service, he was not connected with the United States Government or its Civil Service Commission, had no control over appointments to positions under such Government, was not in a position to secure any appointments for anyone, and, as respects positions named in his advertisements and as to which his courses and instruction were offered, there had been extended periods during which no examinations were held, and only residents of districts in which examinations might at some future date be held were eligible to take same; and

(*b*) Represented that he obtained information from the Civil Service Commission with respect to examinations to be held which was not available to students, and that qualified instructors graded and marked examination papers, through such statements as "When information comes to us that examinations are to take place in your immediate locality you can request lessons sent you air mail or special delivery as we know you are anxious to take an examination as soon as possible," and "The lessons of this course have been assembled after a thorough analysis of past examinations have been made by our competent experts";

Facts being he did not have in his employ, and was not himself, a qualified instructor nor did he employ competent experts who, after thorough analysis of past examinations, had assembled courses of instruction offered by him, and he had had, as matter of fact, no experience in preparing applicants

for civil service examinations in subjects offered and had no influence with respect to dates and locations of such examinations that was not available to public generally;

With effect, through use of aforesaid misleading representations, of confusing, misleading, and deceiving members of public into belief that such representations were true, and of inducing them to purchase his said courses of study and instruction and pursue same on account of such belief:

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

Mr. William L. Pencke for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Milton S. Long, individually and doing business under the name and style of Walton Training Bureau, 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. Milton S. Long is an individual trading and doing business under the name and style of Walton Training Bureau, with his office and principal place of business at 121 Ellison Street, in the city of Paterson, State of New Jersey.

Par. 2. Respondent is now, and since the month of February 1940, has been engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examinations for certain civil service positions under the United States Government, which said courses are pursued by correspondence through the medium of the United States mail. Respondent, in the course and conduct of said business during the time aforesaid, caused, and does now cause, his said courses of study and instruction to be transported from his said place of business in New Jersey to, into and through States of the United States other than New Jersey to the purchasers thereof in such other States.

Par. 3. In the sale of said courses of study and instruction, the respondent makes use of advertisements inserted in newspapers circulated among the general public in various States of the United States and also printed advertising matter mailed to prospective students throughout the United States, in and by which various misleading representations are made in regard to said courses or matters and things connected therewith. Among such misleading representations

are those which represent or imply that positions in the United States Government are immediately available or that respondent can secure positions for students of his courses; that examinations will be held frequently; that the starting salaries are greater than they are in fact, that respondent obtains information from the Civil Service Commission with respect to examinations being held which is not available to students, and that qualified instructors grade and mark examination papers. Typical of such representations are the following:

MEN WANTED
Work for the Government
Salaries $1,700–$2,600 Per Year
No layoffs! Vacations with pay! Pensions!
Railway Postal Clerk City Mail Carrier
BE Post Office Clerk Rural Mail Carrier
Do not wait for examination
dates to be announced
Prepare Yourself Now!

We are so certain that our simple course will eventually bring about your appointment that we are willing to wait for our tuition fee until you are appointed and working. Entire cost of our 10-lesson Home Training course is $25, plus $3 enrollment fee. In plain words you owe us nothing unless our Home Training course actually gets you an appointment and are working.

If you are a citizen of U. S.—
weigh 125 lbs.—height 5'4"—age
18 to 50. Use the coupon below.

You Pay for Our Home Study Course Only After You Have Received Appointment and Are Working.

Railway Postal Clerk, City Mail Carrier, Post Office Clerk and Rural Mail Carrier examinations are held frequently in different cities in the United States.

When information comes to us that examinations are to take place in your immediate locality you can request lessons sent you air mail or special delivery as we know you are anxious to take an examination as soon as possible.

There is a $3.00 enrollment fee after your application is accepted and filed—this partly pays for the cost of a qualified instructor for grading and marking your examination papers.

The lessons of this course have been assembled after a thorough analysis of past examinations have been made by our competent experts.

We offer you many years' experience in coaching for examinations.

In truth and in fact there are no positions immediately available in the Postal Service of the United States Government; the respondent is not connected with the United States Civil Service Commission and does not have control over any appointments to positions under the United States Government and is not in a position to secure any appointments for any one. With respect to positions named in respondent's advertisements as to which the courses of study and instruc-

tion are being offered, there have been extended periods of time during which no examinations were held; moreover, only residents of the districts in which examinations may be held at some future date are eligible for taking such examination. The respondent does not have in his employ any qualified instructors nor is he himself a qualified instructor. In fact, respondent has no experience in preparing applicants for civil service examinations in the subjects offered for instruction; and has no information with respect to dates and locations of civil service examinations which is not available to the public generally.

PAR. 4. The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that such representations are true, and to induce them to purchase respondent's courses of study and instruction and purchase the same on account thereof.

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 11th day of October 1940, issued, and on the 14th day of October 1940, served, its complaint in this proceeding upon respondent, Milton S. Long, charging said Milton S. Long, individually and trading as Walton Training Bureau, 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 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. 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 finding as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Milton S. Long, is an individual who is now, and at all times herein mentioned has been, trading and doing business under the name and style of Walton Training Bureau, with his principal office and place of business located at 121 Ellison Street, Paterson, N. J.

PAR. 2. Respondent, Milton S. Long, individually, and trading under the name and style of Walton Training Bureau, is now, and since the month of February 1940, has been, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction intended for preparing students thereof for examinations for certain civil service positions in the United States Government, which said courses of study and instructions are pursued by correspondence through the medium of the United States mail. Respondent in the course and conduct of said business during the time aforesaid, caused and does now cause his said courses of study and instruction to be transported from his said place of business in New Jersey to, into and through States of the United States other than New Jersey to the various purchasers thereof in such other States.

PAR. 3. Respondent is now, and during the time above mentioned has been, making use of advertisements inserted in newspapers, circulating among the general public in various States of the United States, and is now and has been making use of printed advertising matter mailed to prospective students throughout the United States in and by which means various misleading representations are, and have been, made in regard to his aforesaid courses and matters and things connected therewith.

Among such misleading representations made as aforesaid, are those which represent or imply that:

1. Positions in the United States Government are immediately available.
2. Respondent can secure positions for students of his courses.
3. Examinations will be held frequently.
4. Starting salaries are greater than they are in fact.
5. Respondent obtains information from the Civil Service Commission with respect to examinations to be held which is not available to students.
6. Qualified instructors grade and mark examination papers.

Typical of such misleading representations, inserted as advertisements in newspapers as aforesaid, or mailed to prospective students as aforesaid, are the following:

MEN WANTED
Work for the Government
Salaries $1,700—$2,600 Per Year
No layoffs! Vacations with pay! Pensions!
Railway Postal Clerk City Mail Carrier
BE Post Office Clerk, Rural Mail Carrier
Do not wait for examination
dates to be announced
Prepare Yourself Now!

We are so certain that our simple course will eventually bring about your appointment that we are willing to wait for our tuition fee until you are appointed and working. Entire cost of our 10-lesson Home Training Course, is $25, plus $3 enrollment fee. In plain words you owe us nothing unless our Home Training Course actually gets you an appointment and are working.

If you are a citizen of U. S.—
weigh 125 lbs.—height 5'4"—age
18 to 50. Use the coupon below.

You pay for Our Home Study Course Only After You Have Received Appointment and Are Working.

Railway Postal Clerk, City Mail Carrier, Post Office Clerk and Rural Mail Carrier examinations are held frequently in different cities in the United States.

When information comes to us that examinations are to take place in your immediate locality you can request lessons sent you air mail or special delivery as we know you are anxious to take an examination as soon as possible.

There is a $3.00 enrollment fee after your application is accepted and filed—this partly pays for the cost of a qualified instructor for grading and marking your examination papers.

The lessons of this course have been assembled after a thorough analysis of past examinations have been made by our competent experts.

We offer you many years' experience in coaching for examinations.

PAR. 4. In truth and in fact there are no positions immediately available in the Postal Service of the United States Government. Respondent is not connected with the United States Government or with the United States Civil Service Commission, and he does not have control over any appointments to positions under the United States Government. Respondent is not in a position to secure any appointments for anyone. With respect to positions named in respondent's advertisements as to which the courses of study and instruction are being offered, there have been extended periods of time during which no examinations were held and, moreover, only residents of the districts in which examinations may be held at some future date are eligible for taking such examinations.

PAR. 5. Respondent does not have in his employ, nor is respondent himself, a qualified instructor, nor does respondent have in his employ experts who, after a thorough analysis of past examinations, have assembled the courses of instruction offered by him; as a matter of

fact, respondent has had no experience in preparing applicants for civil service examinations in the subjects offered for instruction, and he has no information with respect to dates and locations of civil service examinations that is not available to the public generally.

PAR. 6. The foregoing misleading representations used by respondent in advertising in newspapers, and the misleading representations used by respondent in the printed matter mailed to prospective students, in the sale of his course of study and instruction have had, and do now have the tendency to, and do in fact, confuse, mislead, and deceive members of the public into the belief that such representations are true, and to induce them to purchase respondent's courses of study and instruction and pursue the same on account thereof.

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, Milton S. Long, individually or when trading under the name and style of Walton Training Bureau, or under any other name and style, in connection with the offering for sale, sale, and distribution of his courses of study and instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that positions in the United States Government are immediately available.

2. Representing that he can secure positions for students of his courses, or representing he has any control over appointments to positions under the United States Government, or that he is in a position to secure appointments with the United States Government.

3. Representing that civil service examinations will be held frequently.

4. Representing that the starting salaries for any position so advertised are greater than they are in fact.

5. Representing that he obtains information from the Civil Service Commission with respect to examinations being held which is not available to students.

6. Representing that qualified instructors grade and mark examination papers, or that the courses offered by him have been assembled after a thorough analysis of past examinations have been made by competent experts.

7. Representing that he is connected with the United States Government or the United States Civil Service.

8. Representing that the positions named in his advertisements, or any other positions in the United States Government, are immediately available to his students, unless the civil service is accepting applications for such positions.

9. Representing that he has had experience in preparing applicants for civil service examination or that he has had experience in qualifying applicants for such examination.

10. Representing that he has information with respect to dates and location of civil service examinations which is not available to the public generally.

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

IN THE MATTER OF

HALL & RUCKEL, INC.

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

Docket 3389. Complaint, Apr. 26, 1938—Decision, Dec. 27, 1940

Where a corporation engaged in preparation, in cream and powder form, of its "X-Bazin" depilatory, and in interstate sale and distribution thereof, in substantial competition with others also engaged in sale and distribution, in commerce, of preparations manufactured, advertised, and sold as depilatories, and including many who make, distribute and sell to purchasing public preparations recommended as such, and who in no way misrepresent the efficacy, properties or nature of their respective products; in advertising its said "X-Bazin" in newspapers and other periodicals of general circulation throughout the United States, and through advertising folders and other advertising matter distributed among prospective purchasers—

(*a*) Represented that its said preparation discouraged growth of hair and delayed appearance thereof for a material length of time, and that hair was much slower in returning or regrowing than when it was shaved or otherwise removed, and that it would permanently eradicate hair; and

(*b*) Represented that hair returning or regrowing after use of its said preparation was softer and less coarse than that returning or regrowing after shaving, and that its said product gave results unlike other methods of hair removal;

Facts being its said "X-Bazin" would not discourage growth of hair or delay appearance thereof for any material length of time, nor permanently remove hair from the body, nor lessen future growth thereof nor devitalize roots of the hair, hair was not appreciably slower in returning or regrowing than it was following other methods of hair removal, and, while regrowth of hair removed by depilatory might, as compared with regrowth of that removed by razor, give impression of being softer than original, it would not in fact be any less coarse or any softer than other, but hair follicle would in any case retain its original diameter and hair regrowing after use of depilatory would have exactly same characteristics as that growing before such removal; and

(*c*) Represented that its product was not caustic and was entirely safe and harmless, and had been and was endorsed by scientists and physicians;

Facts being that while it was reasonably safe for use by most individuals, it was not entirely safe in all cases, certain persons being susceptible or hypersensitive to chemicals contained in depilatories, including barium sulphide contained in said product, and responsible for caustic action thereof, persons thus susceptible develop inflammation of the follicles or pores in the skin and, in some instances where reactions in the hair follicles is more severe, folliculitis or, in case of more severe infection of same type, carbuncles, which often have appearance of pimples and may conduce to formation of boils, and its said product was not and never had been endorsed or recommended by scientists or physicians;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such false and misleading claims and representations were true, and into purchase of substantial quantity of its product as a result of such erroneous belief, and with result that trade was diverted unfairly to it from its competitors aforesaid; to the substantial injury of competition in commerce

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constantial injury of competition in commerce:

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

Mr. Floyd O. Collins and *Mr. Merle P. Lyon* for the Commission.

Mock & Blum, 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 Hall & Ruckel, 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, Hall & Ruckel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office at 241 Thirty-seventh Street, Brooklyn, N. Y.

Par. 2. Respondent is now, and has been for several years last past, engaged in the business of preparing and selling a preparation represented to be a depilatory. Said preparation is marketed in both a cream and powder form and designated "X-Bazin." Said preparation is sold and recommended by respondent for removing superfluous hair and other hair from the human body. Respondent causes said product, when sold, to be shipped and transported in commerce from its place of business located in the State of New York to purchasers thereof located at various points in States of the United States other than the State of New York. It maintains, and has at all times mentioned herein maintained, a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

Par. 3. Respondent, in the course and conduct of its business, is now, and at all times herein referred to has been, in substantial competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution in commerce

among and between the various States of the United States and the District of Columbia of other preparations prepared, manufactured, advertised, and sold as depilatories.

PAR. 4. Respondent, in the course and conduct of its business as aforesaid, and for the purpose of inducing individuals to purchase its preparation "X-Bazin," has caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States, and has printed certain advertising folders, literature, and other advertising matters, in all of which the respondent has caused the firm name and the name of the said preparation to be prominently and conspicuously displayed, and in which the following statements are made:

The special formula of X-Bazin actually retards the growth of hair. When the regrowth does come, it is much softer and less conspicuous than before. The skin is left smooth, soft, and white.

DON'T BE AN AIREDALE. In the merciless slang of Hollywood, a girl with hair on arms and legs is "an Airedale." That's why film stars take hair off and keep it off with X-Bazin, the safe, efficient, and reliable hair remover.

Spread mild, creamy X-Bazin over your limbs and under arms. With beautiful certainty it destroys the hair swiftly, completely, avoiding the blue look—and the irritation—that comes from shaving. X-Bazin leaves your skin virginally white, smooth and hair-free—and definitely discourages re-growth.

Generations of women have found that the safest and most reliable method for removing unwanted hair. The special formula of X-Bazin actually retards the growth of hair. Do not confuse X-Bazin with common depilatories. Its mild ingredients contrast with the harsh action of ordinary hair removing preparations. Eminent physicians endorse X-Bazin for its perfect safety, speed, and convenience.

No other process of removing unwanted hair so successfully combines ease and thoroughness with perfect safety.

All of said statements, together with many similar statements appearing in respondent's advertising and literature, purport to be descriptive of respondent's product "X-Bazin." In all of its advertising and literature respondent represents, through statements and representations herein set-out and other statements of similar import and effect, (*a*) that its product is not caustic; (*b*) that its product is entirely safe and harmless; (*c*) that its product discourages the growth of hair, delays its appearance for a material length of time and that the hair is much slower in returning or regrowing than when the hair is shaved or otherwise removed; (*d*) that the hair returning or regrowing after using X-Bazin is softer and less coarse than the hair returning or regrowing after shaving; (*e*) that its product gives results unlike other methods of hair removal; (*f*) that its product will permanently eradicate hair; and (*g*) that its product has been and is endorsed by scientists and physicians.

PAR. 5. The claims and representations made by the respondent with respect to the properties, nature and effect of its product when used are grossly exaggerated, false, and misleading. In truth and in fact, respondent's product is caustic; it does not discourage the growth of hair or delay its appearance for any material length of time, and the hair is not appreciably slower in returning or regrowing than it is following the use of other methods of hair removal; the hair that returns after using X-Bazin is not softer and less coarse than the hair returning after the use of other methods of hair removal; said product, X-Bazin, will not permanently remove hair from the human body, neither will it definitely discourage or lessen the future growth or devitalize the roots of hair; it is not entirely safe and harmless, but, on the contrary, its use will cause burning, smarting and irritation and have other injurious effect upon the skin; said product is not, and has not been, recommended by scientists and physicians.

PAR. 6. There are among respondent's competitors many who manufacture, distribute, and sell to the purchasing public preparations recommended as depilatories who in no way misrepresent the efficacy, properties, or nature of the preparation manufactured and sold by them.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating and describing its preparation "X-Bazin"and the efficacy of said preparation, as hereinabove set out, in offering for sale and selling said preparation, were and are calculated to, and had and now have, the tendency and capacity to, and did, and do now mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true, and into the purchase of a substantial quantity of respondent's preparation in reliance upon said erroneous belief. As a direct consequence of said mistaken and erroneous beliefs, induced by the respondent's representations as hereinabove set out, a substantial number of the consuming public has purchased a substantial amount of respondent's preparation, with the result that trade has been diverted unfairly to the respondent from competitors likewise engaged in selling and distributing preparations which are recommended and sold as depilatories. As a direct result of the false and misleading representations of the respondent injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 26, 1938, issued and thereafter served its complaint in this proceeding upon respondent, Hall & Ruckel, Inc., a corporation, charging respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint, and in opposition thereto, were introduced 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, the testimony and other evidence, and briefs and oral argument in support of the complaint, and in opposition thereto, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACT

Paragraph 1. Respondent, Hall & Ruckel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office at 241 Thirty-Seventh Street, Brooklyn, N. Y.

Par. 2. Respondent is now, and has been for several years last past, engaged in the business of preparing and selling a depilatory in both a cream and powder form, designated "X-Bazin." Said preparation is sold and recommended by respondent for removing superfluous hair and other hair from the human body. Respondent causes said product, when sold to be shipped and transported from its place of business in the State of New York to purchasers thereof located at various points in States of the United States other than the State of New York, and in the District of Columbia. It 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. 3. In the course and conduct of its business respondent is now, and at all times herein referred to has been, in substantial competition with other corporations and with 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 preparations manufactured, advertised, and sold as depilatories.

PAR. 4. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its preparation "X-Bazin," respondent has caused advertisements to be inserted in newspapers, magazines and other periodicals of general circulation throughout the United States, and has distributed among prospective purchasers certain advertising folders and other advertising matter, in all of which the respondent has caused the name of said preparation to be prominently and conspicuously displayed, and in which the following statements are made:

The special formula of X-Bazin actually retards the growth of hair. When the regrowth does come, it is much softer and less conspicuous than before. The skin is left smooth, soft and white.

Don't Be An Airedale. In the merciless slang of Hollywood, a girl with hair on arms or legs is "an Airedale". That's why film stars take hair off and keep it off with X-Bazin, the safe, efficient, and reliable hair remover.

Spread mild, creamy X-Bazin over your limbs and under arms. With beautiful certainty it destroys the hair swiftly, completely, avoiding the blue look—and the irritation—that comes from shaving. X-Bazin leaves your skin virginally white, smooth and hair-free—and definitely discourages regrowth.

Generations of women have found that the safest and most reliable method for removing unwanted hair. The special formula of X-Bazin actually retards the growth of hair. Do not confuse X-Bazin with common depilatories. Its mild ingredients contrast with the harsh action of ordinary hair removing preparations. Eminent physicians endorse X-Bazin for its perfect safety, speed and convenience.

No other process of removing unwanted hair so successfully combines ease and thoroughness with perfect safety.

All of said statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's product "X-Bazin." In all of its advertising literature respondent represents, through statements and representations herein set out and other statements of similar import and effect, (*a*) that its product is not caustic; (*b*) that its product is entirely safe and harmless; (*c*) that its product discourages the growth of hair, delays its appearance for a material length of time, and that the hair is much slower in returning or regrowing than when the hair is shaved or otherwise removed; (*d*) that the hair returning or regrowing after using X-Bazin is softer and less coarse than the hair returning or regrowing after shaving; (*e*) that its product gives results unlike other methods of hair removal; (*f*) that its product will permanently eradicate hair; and (*g*) that its product has been and is endorsed by scientists and physicians.

PAR. 5. Respondent's X-Bazin cream contains barium sulphide, calcium carbonate, glycerine, perfume, and water. Respondent's preparation X-Bazin powder contains barium sulphide, calcium carbonate, and starch to be mixed with water into a paste at the time of use.

Respondent sells much more of the cream than it sells of the powder. The latter is sold principally to old-time users, constituting only a negligible quantity of the entire product sold. Respondent claims to have sold over ten million tubes of the cream X-Bazin since its inception.

PAR. 6. The claims and representations made by the respondent with respect to the properties, nature, and effect of its product when used are grossly exaggerated, false, and misleading. In truth and in fact, respondent's product accomplishes its function through the solvent action of the ingredient barium sulphide upon the horny epithelial cells of the hair and contains a sufficient amount of this ingredient to render the action of the product caustic. The barium sulphide is the ingredient which is the efficient cause of that reaction. Chemical depilatories in common use contain sulphides of barium, sodium, and strontium. Respondent's product is a common depilatory, and does not differ in its properties and effects from other chemical depilatories. In addition to the use of chemical depilatories, superfluous or unwanted hair may be removed from the human body, (1) by the use of electrolysis, a permanent but expensive procedure, (2) by shaving, and (3) by mechanical depilatories such as melted wax, which forcibly removes the hair by the application of force after the wax has hardened. Depilatories and shaving alike remove hair only temporarily and do not permanently eradicate hair. The temporary removal of hair by such methods does not affect the papillae from which hair originates, nor the hair growth below the surface of the skin.

In truth and in fact, respondent's product, X-Bazin, does not discourage the growth of hair or delay its appearance for any material length of time, and the hair is not appreciably slower in returning or regrowing than it is following the use of other methods of hair removal. The hair that returns after the use of X-Bazin is not softer or less coarse than the hair returning after the use of other methods of hair removal. Said product, X-Bazin, will not permanently remove hair from the human body, nor lessen the future growth of hair, nor devitalize the roots of the hair.

Removal of hair by a depilatory, due to the solvent action, might, leave a rounded top on the regrowing hair, as compared with the sharp edge produced by shaving with a razor. The regrowth of

hair might, therefore, give the impression of being softer than the original hair, but in fact it would not be any less coarse or any softer than the regrowth of hair after shaving. The hair follicle would retain its original diameter in any case, and hair regrowing after the use of depilatories has exactly the same characteristics as hair growing before such removal.

While respondent's product is reasonably safe for use by most individuals, it is not entirely safe in all cases. Certain persons are susceptible or hypersensitive to the chemicals contained in depilatories, including the barium sulphide found in respondent's product, and the use of respondent's product by such persons may be followed by an irritation, causing a dermatitis or inflammation of the skin. Occasionally such persons will develop what is known as folliculitis, an inflammation of the follicles or pores in the skin, and in some instances, where this reaction in the hair follicles is more severe, such persons develop folliculosis, or in cases of a more severe type of the same infection, carbuncles. The dermatitis often has the appearance of pimples and may conduce the formation of boils. Respondent's product is not, and never has been, endorsed or recommended by scientists or physicians.

PAR. 7. There are among respondent's competitors many who manufacture, distribute and sell to the purchasing public preparations recommended as depilatories who in no way misrepresent the efficacy, properties or nature of the products manufactured and sold by them.

PAR. 8. The use by the respondent of said false and misleading statements and representations in connection with the offering for sale, sale and distribution of respondent's product has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said claims and representations are true, and into the purchase of a substantial quantity of respondent's product as a result of such erroneous belief. Thereby trade has been diverted unfairly to the respondent from its said competitors, and in consequence substantial injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of 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 argument, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Hall & Ruckel, 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 product designated "X-Bazin," or any product of substantially similar composition 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 representing:

1. That said product is not caustic.
2. That said product is in all cases entirely safe or harmless.
3. That said product discourages the growth of hair, or delays the appearance of hair for any substantial period of time, or that the hair is appreciably slower in returning or regrowing after the use of respondent's product than when the hair is shaved or otherwise removed.
4. That the hair returning or regrowing after the use of respondent's product is softer or less coarse than the hair returning or regrowing after shaving.
5. That the results obtained from the use of said product differ essentially from the results obtained from the use of other methods of hair removal.
6. That said product permanently eradicates hair.
7. That said product has been endorsed or recommended by scientists or physicians.

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

KONGO CHEMICAL 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 4193. Complaint, July 24, 1940—Decision, Dec. 28, 1940

Where a corporation engaged in manufacture of its "Kongolene" hair cosmetic, and in interstate sale and distribution thereof, and also for use in connection therewith, its "Ebonized Ground Oil", or dark-colored, perfumed vaseline, and which it directed purchasers of said "Kongolene" to apply to their hair after they had used same; in advertisements of said "Kongolene" which it disseminated and caused to be disseminated through the mails and by various other means in commerce, and in other ways, and including circulars and other advertising literature, etc.; and which advertisements were intended and likely to induce purchase of its said preparation—

(*a*) Represented, directly and by implication, that said "Kongolene" was a purely vegetable product, and that use thereof would straighten the hair and stop it from falling out and promote growth thereof, and cure and permanently remove dandruff, facts being it was not wholly a vegetable product, but was composed of sodium hydroxide or lye, fatty acids, water and ash, with said lye being principal active ingredient thereof, character of person's hair is determined by shape of opening of hair follicles imbedded in flesh underneath scalp, outside application will not change their shape or permanently change character of hair, and use of said product will not straighten hair except temporarily, nor even that, except for short period of time, through enabling it to be pulled straight, when, by application of said vaseline and as long as same remains on hair, kinking or curling thereof will be prevented, and, while use thereof, with accompanying shampoo as directed, will facilitate removal of dandruff scales, it will not prevent reformation thereof nor in any way cure, ameliorate, or permanently remove dandruff, and will not stop hair from falling out or promote growth thereof;

(*b*) Represented that said preparation constituted greatest discovery of the age, and that its use would benefit offspring of its users, and that it was safe and harmless, facts being such was not the case, by virtue of the 4 5/10 percent content of hydroxide or lye, and use thereof, with its said dangerous chemical irritant content, might result in severe caustic action upon skin and scalp, with resulting destructive burns of the first and second degree, and said preparation would not benefit offspring of users in any way and it was not greatest discovery of the age; and

(*c*) Failed to reveal in said advertisements that use of such preparation, under conditions prescribed therein or under such conditions as are customary or usual, might result in serious injury to user;

With capacity and tendency, through use of aforesaid false, misleading, and deceptive statements and representations disseminated as aforesaid, and its failure to reveal danger inherent in said preparation, to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief

that such statements, representations, and advertisements were true, and into purchase by public of substantial quantities of 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.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Donovan R. Divet for the Commission.

Mr. Aaron L. Gitenstein, of Brooklyn, N. Y., and *Mr. Eustace V. Dench*, 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 Kongo Chemical 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, Kongo Chemical 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 66 East One Hundred and Thirty-first Street, New York, N. Y.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution of a cosmetic preparation known as "Kongolene," intended for use on the hair. Respondent causes its said preparation, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. 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.

In connection with the sale and distribution of said product "Kongolene" as aforesaid, respondent sells and distributes another cosmetic preparation known as "Ebonized Ground Oil" which is represented by respondent to be "a necessary adjunct to Kongolene" and which respondent directs purchasers of "Kongolene" to apply to their hair after they have used "Kongolene." Said product, Ebonized Ground Oil, is a dark-colored, perfumed vaseline.

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 con-

cerning its said product, Kongolene, 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 United States mails, by circulars, and other advertising literature, and by various other means in commerce, are the following:

Kongolene is a purely vegetable product.

Kongolene, The Veribest yet Positively straightens the hair.

Kongolene will certainly straighten your hair, but you must give it time to work.

It is a specialty and will straighten the crimpiest kind of hair, stops it from falling out, promotes a luxuriant growth of healthy hair, removes dandruff and keeps the hair soft and glossy. Kongolene is the greatest discovery of the age.

* * * It will benefit you for generations to come, if you are homely, likewise will be your offsprings, if you are handsome, they will be likewise.

Kongolene has a little smarting sensation, something like menthol, but do not be alarmed, it is one of the ingredients doing its work, do not allow it to smart the scalp too much before you wash it out.

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 said product "Kongolene" is a pure vegetable product; that its use will straighten the hair, will stop hair from falling out, will promote the growth of hair, and will cure and permanently remove dandruff; that it is the greatest discovery of the age; that its use will benefit the offspring of its users; and that said preparation is safe and harmless.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent, as herein set forth, are grossly exaggerated, false, and misleading. In truth and in fact, said product "Kongolene" is not wholly a vegetable product, but is composed of sodium hydroxide or lye, fatty acids, water, and ash, the said sodium hydroxide being the principal active ingredient thereof. The character of a person's hair is determined by the shape of the opening of

the hair follicles, small glands or depressions from which the hair grows. These follicles are imbedded in the flesh underneath the scalp and no application to the outside body will change their shape or permanently change the character of the hair. The use of said product will not straighten the hair except temporarily, and will not straighten it even temporarily, except by softening it for a short period of time, thereby enabling it to be pulled straight. When thus pulled straight the application of a vaseline, such as respondent's Ebonized Ground Oil, will prevent the hair from kinking or curling, but only so long as the said vaseline remains on the hair.

Hairs are shed constantly and in many instances are replaced by new hair from active hair follicles or glands. No external application to the hair or scalp can favorably influence the growth of hair and the use of said product "Kongolene" does not stop hair from falling out and does not promote the growth of the hair. Said product is not the greatest discovery of the age. Its use will not benefit the offspring of its users in any way. The use of said product "Kongolene" with the accompanying shampoo directed by respondent will facilitate the removal of dandruff scales, but will not prevent the reformation of dandruff scales, as they are the result of a normal exfoliating process of the skin and scalp. The use of said product will not in any way cure, ameliorate, or permanently remove dandruff.

Said product "Kongolene" is not safe or harmless, as it contains 4$\frac{5}{10}$ percent sodium hydroxide or lye, which is a dangerous chemical irritant. The use of said product may result in severe caustic action upon the skin and the scalp, with resulting destructive burns of the first and second degree.

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 injury to the user.

PAR. 6. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparation "Kongolene," disseminated as aforesaid, and its failure to reveal the danger inherent in said preparation, have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and into the purchase by the public of substantial quantities of respondent's 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 July 24, 1940, issued and on July 25, 1940, served its complaint in this proceeding upon the respondent, Kongo Chemical 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. After the filing of respondent's answer to said complaint, and after the introduction of certain evidence in support of said complaint, 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, substitute answer, and evidence, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent, Kongo Chemical 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 66 East One Hundred Thirty-first Street, New York, N. Y.

Par. 2. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution of a cosmetic preparation known as "Kongolene," intended for use on the hair. Respondent causes its said preparation, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. 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.

In connection with the sale and distribution of said product "Kongolene" as aforesaid, respondent sells and distributes another

cosmetic preparation known as "Ebonized Ground Oil" which is represented by respondent to be "a necessary adjunct to Kongolene" and which respondent directs purchasers of "Kongolene" to apply to their hair after they have used "Kongolene." Said product, Ebonized Ground Oil, is a dark-colored, perfumed vaseline.

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, Kongolene, 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 United States mails, by circulars, and other advertising literature, and by various other means in commerce are the following:

Kongolene is a purely vegetable product.

Kongolene, The Veribest yet Positively straightens the hair.

Kongolene will certainly straighten your hair, but you must give it time to work.

It is a specialty and will straighten the crimpiest kind of hair, stops it from falling out, promotes a luxuriant growth of healthy hair, removes dandruff and keeps the hair soft and glossy. Kongolene is the greatest discovery of the age.

* * * It will benefit you for generations to come, if you are homely, likewise will be your offsprings, if you are handsome, they will be likewise.

Kongolene has a little smarting sensation, something like menthol, but do not be alarmed, it is one of the ingredients doing its work, do not allow it to smart the scalp too much before you wash it out.

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 said product "Kongolene" is a purely vegetable product; that its use will straighten the hair, will stop hair from falling out, will promote the growth of hair, and will cure and permanently remove dandruff; that it is the greatest discovery of the age; that

its use will benefit the offspring of its users; and that said preparation is safe and harmless.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent, as herein set forth, are grossly exaggerated, false, and misleading. In truth and in fact, said product "Kongolene" is not wholly a vegetable product, but is composed of sodium hydroxide or lye, fatty acids, water and ash, the said sodium hydroxide being the principal active ingredient thereof. The character of a person's hair is determined by the shape of the opening of the hair follicles, small glands or depressions from which the hair grows. These follicles are imbedded in the flesh underneath the scalp and no application to the outside body will change their shape or permanently change the character of the hair. The use of said product will not straighten the hair except temporarily, and will not straighten it even temporarily, except by softening it for a short period of time, thereby enabling it to be pulled straight. When thus pulled straight the application of a vaseline, such as respondent's Ebonized Ground Oil, will prevent the hair from kinking or curling, but only so long as the said vaseline remains on the hair.

Hairs are shed constantly and in many instances are replaced by new hair from active hair follicles or glands. No external application to the hair or scalp can favorably influence the growth of hair and the use of said product "Kongolene" does not stop hair from falling out and does not promote the growth of the hair. Said product is not the greatest discovery of the age. Its use will not benefit the offspring of its users in any way. The use of said product "Kongolene" with the accompanying shampoo directed by respondent, will facilitate the removal of dandruff scales, but will not prevent the reformation of dandruff scales, as they are the result of a normal exfoliating process of the skin and scalp. The use of said product will not in any way cure, ameliorate or permanently remove dandruff.

Said product "Kongolene" is not safe or harmless, as it contains 4 5/10 percent sodium hydroxide or lye, which is a dangerous chemical irritant. The use of said product may result in severe caustic action upon the skin and the scalp, with resulting destructive burns of the first and second degree.

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 injury to the user.

PAR 6. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparation "Kongolene," disseminated as aforesaid, and its failure

to reveal the danger inherent in said preparation, have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and into the purchase by the public 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 [1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, evidence introduced in support of said complaint, 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, Kongo Chemical 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 its cosmetic preparation designated "Kongolene," or any other preparation of substantially similar composition, or possessing substantially similar properties, whether sold under the same name or 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 other 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 purely vegetable product; that said preparation will permanently straighten the hair, or contribute to the straightening of the hair in any way other than by softening the hair temporarily; that said preparation will prevent hair from

[1] Order published as amended by Commission order of April 8, 1941, which set forth the filing of a petition for modification by respondent and that after due consideration it appeared that modification was warranted by public interest.

falling out and promote the growth of hair; that said preparation will cure or permanently remove dandruff; that said preparation is the greatest discovery of the age; that the use of said preparation will benefit the offspring of the user; or that said preparation is safe or harmless; or which advertisement fails to reveal that the use of said preparation may result in severe caustic action upon the skin and scalp with resulting burns: *Provided, however*, That said 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 that the preparation may result in severe caustic action upon the skin and scalp with resulting burns and that in order to avoid such caustic action and burns, the preparation should not be applied at any one time for a period of longer than 10 minutes and should be removed immediately when a pronounced sensation of warmth is experienced; the preparation should be removed by washing the hair and scalp thoroughly with large quantities of water at least four times and until no sensation of the presence of soap remains and the preparation must not be brought in contact with any part of the body except the hands, hair, and scalp and especially must not be brought in contact with the eyes or with the mucous membrane of the nose or of the mouth.

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 does not conform in all respects to the affirmative requirements of paragraph 1 hereof.

It is further ordered, That the respondent shall, within 10 days after the 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

JOE L. THOMPSON, TRADING AS PREMIUM 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 4287. Complaint, Aug. 29, 1940—Decision, Dec. 28, 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) as illustrative, number of candy bars of uniform size and shape, together with push card for use in sale and distribution of said bars under a plan in accordance with which purchaser paid therefor 1, 2, 3, 4, or 5 cents in accordance with particular number pushed by chance from card, and purchaser pushing last disk on card received extra bar of candy without additional cost, and (2) assortments with which he furnished various other push cards for use in sale and distribution of his candy by means of gift enterprise or lottery scheme and similar to that above described from which they varied in detail only;

Sold such assortments thus packed and assembled, together with said devices, to agents, 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, involving game of chance, or sale of a chance to procure bars of candy at much less than normal retail price thereof, or additional bars without additional cost, 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 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 method involving game of chance or sale of a chance to win something by a chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his candy and element of chance involved therein and were thereby induced to buy and sell his said candy in preference to candy of said competitors who do not use the same or equivalent methods, and with effect, through use of said method by him and because of said game of chance, of diverting unfairly trade and commerce 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.

Oates & Quillin, of Fayetteville, 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 Joe L. Thompson, individually, and trading as Premium 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, Joe L. Thompson, is an individual trading as Premium Candy Co., with his office and principal place of business located at Fayetteville, N. C. Respondent is now, and for more than 3 years 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 Fayetteville, 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 3 years 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 agents, 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¢, 2¢, 3¢, 4¢ and 5¢, 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 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 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 29, 1940, issued and thereafter served its complaint in this proceeding upon respondent Joe L. Thompson, individually and trading as Premium Candy Company, 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 16, 1940, the respondent filed his answer in which answer he admitted all the material allegations of fact set forth in said complaint, and subsequently respondent waived the filing of briefs and oral argument. 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, Joe L. Thompson, is an individual trading as Premium Candy Company, with his office and principal place of business located at Fayetteville, N. C. Respondent is now, and for more than three years 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 Fayetteville, 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 3 years 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 agents, 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¢, 2¢, 3¢, 4¢, and 5¢, 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 plans 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.

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 respondent having subsequently waived the filing of briefs and oral argument, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Joe L. Thompson, individually and trading as Premium 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 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

HARRY YATES, TRADING AS CUMBERLAND CANDY COMPANY AND DIXIE 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 4296. Complaint, Aug. 30, 1940—Decision, Dec. 28, 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 games of chance, gift enterprise, or lottery schemes when sold and distributed to consumers thereof, and included, as illustrative, assortment composed of a number of candy bars of uniform size and shape, together with a push card for use in sale and distribution of said bars under a plan in accordance with which purchasers paid for said bars 1, 2, 3, 4, and 5 cents, in accordance with chance receipt of figures 1, 2, 3, 4, or 5, as case might be, and assortments with other push cards for use and sale and distribution of his candy by means of games of chance, gift enterprise, or lottery schemes 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 aforesaid sales plan, involving game of chance or sale of a chance to procure bars of candy 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 plan above described, 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 methods involving games 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 the result that many persons were attracted by said plan employed by him in distribution of his candy and in element of chance involved therein, and were thereby induced to buy and sell his candy in preference to that of competitors who do not use same or equivalent methods, and with effect of unfairly diverting trade to him from 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 constitute unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

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

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

Mr. R. G. Cobb, of Fayetteville, 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 Harry Yates, individually and trading as Cumberland Candy Co. and Dixie 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, Harry Yates, is an individual trading as Cumberland Candy Co. and Dixie Candy Co. with his principal office and place of business located at 231 William Street, Fayetteville, N. C. Respondent is now and for more than 2 years last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retailers. Respondent causes, and has caused, said products when sold to be transported from his place of business in the city of Fayetteville, 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 2 years 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 agents, 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 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¢, 2¢, 3¢, 4¢ and 5¢, 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 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. 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 on September 5, 1940, served its complaint in this proceeding upon respondent, Harry Yates, trading as Cumberland Candy Co. and Dixie Candy Co., charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent, Harry Yates, is an individual trading as Cumberland Candy Co. and Dixie Candy Co. with his principal office and place of business located at 231 William Street, Fayetteville, N. C. Respondent is now and for more than 2 years last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retailers. Respondent causes, and has caused, said products when sold to be transported from his place of business in the city of Fayetteville, 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 2 years 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 agents, 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 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¢, 2¢, 3¢, 4¢, and 5¢, respectively. The numbers are effectively concealed from the 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. 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 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.

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, Harry Yates, individually and trading under the names Cumberland Candy Co. and Dixie 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 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 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. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

IN THE MATTER OF

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 4364. Complaint, Oct. 29, 1940—Decision, Dec. 28, 1940

Where two individuals engaged in interstate sale and distribution of their "Alcoban" for alcoholism; in advertisements of their said product which they disseminated and caused to be disseminated through the mails and by various other means in commerce and otherwise, and through newspapers and periodicals, and by circulars, pamphlets, and other advertising literature, and which advertisements were intended and likely to induce purchase of their said product—

(*a*) Represented, directly and by implication, that said preparation was a competent and effective treatment for alcoholism which removed desire for alcoholic stimulants, and that it was safe and harmless, facts being it did not constitute such a treatment for said purpose, nor remove aforesaid desire, and was not safe and harmless, by virtue of content therein of drugs ephedrine hydrochloride, emetine hydrochloride, and pilocarpine hydrochloride in quantities sufficient to cause serious injury to health if used under conditions prescribed in said advertisements, or under such conditions as are customary or usual, and including, among effects thus variously produced, nervous excitability, which might be characterized by tremors, insomnia and anxiety complex, toxic disturbances and conditions, and particularly in case of those whose general resistance is at low level, and possibility of oedema of the lungs; and

(*b*) Failed to reveal, in advertisements disseminated by it as aforesaid, facts material in the light of the representations contained therein, and that use of said preparation under conditions prescribed in said advertisements or under such conditions as are customary or usual might cause serious injury to the nerves, tissues, and lungs, and might produce toxic conditions in the body;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that their preparation possessed properties which it did not in fact possess, and that it was safe and harmless, when such was not the fact, and with result, as consequence of such erroneous and mistaken belief, engendered as above set forth, that said public was induced to purchase and purchased substantial quantities of their 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. 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 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 trading as U. S. Drug & Sales Co., U. S. Drug Laboratories, and U. S. Drug Co., 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 more than 2 years last past have been, engaged in the sale and distribution of various medicinal preparations, including, among others, a drug preparation advertised as "Alcoban" represented by respondents as a treatment for alcoholism.

Respondents cause said preparation, 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 in the District of Columbia. Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 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 product by the United States mails and by various other means in commerce as commerce is defined in the Federal Trade Commission Act; 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 hereinbefore set forth, by

the United States mails, by advertisements in newspapers and periodicals, and by circulars, pamphlets, and other advertising literature, are the following:

LIQUOR HABIT

A treatment that has aided thousands, given secretly or knowingly. $2. Postpaid. Plain wrapper. U. S. Drug Co., 1534 Lawrence St.

* * * * * * *

Tasteless, odorless and colorless when dissolved. ALCOBAN can be given with or without the "drinker's" knowledge.

* * * * * * *

ALCOBAN is designed to do three important things:

I. To make liquor distasteful, killing the desire to drink.
II. To aid in freeing the body of toxic cell poisons created by Alcohol.
III. Contains an ingredient to aid nature in rebuilding the glands.

* * * * * * *

The ALCOBAN treatment is the result of years of work and experimentation by physicians, and represents the scientific method of treating Alcoholism, as it was developed through the knowledge of medical science, and a comprehensive understanding of the cause of "drink," and its results on the organs of the body.

By the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondents' preparation and its effectiveness, respondents have represented, directly and by implication, that said preparation is a competent and effective treatment for alcoholism; that it removes the desire for alcoholic stimulants; that it is safe and harmless.

PAR. 3. The aforesaid representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' preparation does not constitute a competent or effective treatment for alcoholism. It does not remove the desire for alcoholic stimulants. Said preparation is not safe or harmless, as it contains the drugs ephedrine hydrochloride, emetine hydrochloride, and pilocarpine hydrochloride in quantities sufficient to cause serious injury to health if said preparation is used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The drug ephedrine hydrochloride produces a nervous excitability which may be characterized by tremors, insomnia, and an anxiety complex. The drug emetine hydrochloride has a tendency to accumulate in the body tissues, giving rise to toxic disturbances and conditions, particularly in the case of persons whose general resistance is at a low level. The drug pilocarpine hydrochloride may result in oedema of the lungs.

PAR. 4. The advertisements disseminated by respondents as aforesaid constitute false advertisements for the further 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 cause serious injury to the nerves, tissues, and lungs, and may produce toxic conditions in the body.

PAR. 5. The use by the respondents of said false advertisements 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 respondents' preparation possesses properties which it does not in fact possess, and that said preparation is safe and harmless, when such is not the fact. As a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to purchase and has purchased substantial quantities of respondents' preparation.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 29, 1940, issued, and on October 31, 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. Subsequently, respondents filed their answer in which 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 proceding 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 trading as U. S. Drug & Sales Co., U. S. Drug Laboratories, and U. S. Drug Co., 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 more than 2 years last past have been, engaged in the sale and distribution of various medicinal preparations, including, among others, a drug preparation advertised as "Alcoban" represented by respondents as a treatment for alcoholism.

Respondents cause said preparation, 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 in the District of Columbia. Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 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 advertising 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, 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 hereinbefore set forth, by the United States mails, by advertisements in newspapers and periodicals, and by circulars, pamphlets, and other advertising literature, are the following:

LIQUOR HABIT

A treatment that has aided thousands, given secretly or knowingly. $2. Postpaid. Plain wrapper. U. S. Drug Co., 1534 Lawrence St.

* * * * * * *

Tasteless, odorless and colorless when dissolved. ALCOBAN can be given with or without the "drinker's" knowledge.

* * * * * * *

ALCOBAN is designed to do three important things:

I. To make liquor distasteful killing the desire to drink.

II. To aid in freeing the body of toxic cell poisons created by Alcohol.

III. Contains an ingredient to aid nature in rebuilding the glands.

* * * * * * *

The ALCOBAN treatment is the result of years of work and experimentation by physicians; and represents the scientific method of treating Alcoholism, as it was developed through the knowledge of medical science, and a comprehensive understanding of the cause of "drink" and its results on the organs of the body.

By the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondents' preparation and its effectiveness, respondents have represented, directly and by implication, that said preparation is a competent and effective treatment for alcoholism; that it removes the desire for alcoholic stimulants; that it is safe and harmless.

PAR. 3. The aforesaid representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' preparation does not constitute a competent or effective treatment for alcoholism. It does not remove the desire for alcoholic stimulants. Said preparation is not safe or harmless, as it contains the drugs ephedrine hydrochloride, emetine hydrochloride, and pilocarpine hydrochloride in quantities sufficient to cause serious injury to health if said preparation is used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The drug ephedrine hydrochloride produces a nervous excitability which may be characterized by tremors, insomnia, and an anxiety complex. The drug emetine hydrochloride has a tendency to accumulate in the body tissues, giving rise to toxic disturbances and conditions, particularly in the case of persons whose general resistance is at a low level. The drug pilocarpine hydrochloride may result in oedema of the lungs.

PAR. 4. The advertisements disseminated by respondents as aforesaid constitute false advertisements for the further 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 cause serious injury to the nerves, tissues, and lungs, and may produce toxic conditions in the body.

PAR. 5. The use by the respondents of said false advertisements 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 respondents' preparation possesses properties which it does not in fact possess, and that said preparation is safe and harmless, when such is not the fact. As a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to purchase and has purchased substantial quantities of respondents' 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 the 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, individually and 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, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their medicinal preparation designated as Alcoban, or any other medicinal preparation of substantially similar composition, 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 advertisement represents, directly or through inference, that said preparation is a competent or effective treatment for alcoholism; that said preparation is safe or harmless; that said preparation removes the desire for alcoholic stimulants; or which advertisement fails to reveal that the use of said preparation may result in serious injury to the nerves, tissues, and lungs, and may produce toxic conditions in the body.

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 the use of said preparation may result in serious injury to the nerves, tissues, and lungs, and may produce toxic conditions in the body.

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

ROBERT V. BIERHAUS AND EDWARD G. BIERHAUS, TRADING AS E. BIERHAUS & SONS

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

Docket 4377. Complaint, Nov. 14, 1940—Decision, Dec. 28, 1940

Where two individuals engaged in sale and distribution of candy and other confectionery products, including assortments which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and included, as illustrative of various kinds of such assortments sold by them—

(1) assortment consisting of number of candy bars of uniform size and shape, and box of candy, together with push card for use in sale and distribution of said products to public under a plan, and in accordance with said card's explanatory legend, by which purchasers secured right to exchange bar obtained, for 5 cents paid, for 2, 3, or 4, of such bars in accordance with success or failure in securing by chance from board one of lucky numbers there announced, and person making last punch received the box of candy, and other assortments, with which they distributed push cards involving lot or chance feature similar to that above described, from which they varied in detail only; and

(2) assortment consisting of 12 boxes of candy, value of each of which was in excess of 5 cents, together with three-section punchboard, for use in sale and distribution of said products under plan, and in accordance with said board's explanatory legend, by which purchaser or customer secured for 5 cents paid, and in accordance with success or failure in securing one of lucky numbers, or in making last punch in each of said three sections into which board was divided, one of said boxes of candy, and under which those who did not qualify by obtaining one of said numbers or making one of said last punches received nothing for their money other than privilege of punching number from board;

Sold said assortments, along with such punchboards for sale and distribution of their candy to consuming public by means of games of chance, gift enterprises, or lottery schemes as aforesaid, to wholesalers, jobbers, and retailers by whom, as direct or indirect purchasers thereof, they were sold to purchasing public, in accordance with aforesaid sales plans involving game of chance, or sale of a chance to procure additional pieces of candy without additional cost, or boxes of candy at price which was much less than normal retail price thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of their candy in accordance with sales plans hereinabove 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 methods 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 them in sale and distribution of their candy, and by element of chance involved therein, and were thereby induced to buy and sell their candy in preference to that of their said competitors, who do not use same or equivalent methods, and with result, through use of said methods by them and because of said games of chance, of diverting trade unfairly in commerce to them from their 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. L. P. Allen, Jr. for the Commission.

Kessinger, Hill & Arterburn, of Vincennes, Ind., 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 Robert V. Bierhaus and Edward G. Bierhaus, individually and trading as E. Bierhaus & Sons, 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. Robert V. Bierhaus and Edward G. Bierhaus are individuals trading as E. Bierhaus & Sons, with their principal office and place of business located at Second and Perry Streets, Vincennes, Ind. Respondents are now, and for more than 9 years last past have been, engaged in the sale and distribution of candy and other confectionery products to wholesale dealers, jobbers, and retail dealers. The respondents cause and have caused said products, when sold, to be transported from their principal place of business in the city of Vincennes, Ind., to purchasers thereof, at their respective points of location, in the various States of the United States other than Indiana and in the District of Columbia. There is now, and for more than 9 years last past has been, a course of trade by respondents in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are and have been in competition with other 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed 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. Respondents distribute and have distributed various push cards and punchboards for use in the sale and distribution of their candy to the consuming public by means of a game of chance, gift enterprise, or lottery scheme. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondents but this is not all inclusive of the various assortments nor does it include all of the details of the several plans which respondents have been or are using in the sale and distribution of candy by lot or chance.

(*a*) One assortment consists of a number of bars of candy of uniform size and shape and a box of candy together with a device commonly called a push card. The push card contains 60 partially perforated disks and on the face of each of said disks is printed the word "push." Concealed within the said disks are numbers which are effectively concealed from purchasers and prospective purchasers until a push or selection has been made and the selected disk pushed or separated from the card. Sales are 5 cents each. The following legend appears on the face of said card:

VALOMILK DIPS
ADVERTISING 5¢
MEDIUM PER SALE
YOU BUY A FIVE CENT VALOMILK DIP
AND GET ONE PUSH FREE
If you push out One of the Following Numbers or Last Push you can exchange (without extra cost) The 5¢ VALOMILK DIP for the MERCHANDISE INDICATED
No. 13, Four 5¢ VALOMILK DIPS
No. 23, Three 5¢ VALOMILK DIPS
Numbers 5-10-20-25-30-40-50-60
Two 5¢ VALOMILK DIPS
LAST PUSH, LARGE BOX HAND ROLLED
CHOCOLATES

The sales of respondents' candy by means of said push card are made in accordance with the above described legend or instructions. Said bars and boxes of candy are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives one or more bars of candy or a box of candy for the amount of money paid is thus determined wholly by lot or chance.

Respondents sell and distribute and have 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.

(*b*) Another of said assortments consists of 12 boxes of candy together with a device commonly called a punchboard. Said boxes of candy are 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 a statement or statements informing prospective purchasers that certain specified numbers entitle the purchasers thereof to receive without additional cost, one of said boxes of candy. The board is also divided into three sections and the person punching the last number in each of the three sections receives one of said boxes of candy. A purchaser who does not qualify by obtaining one of the lucky numbers or the last punch in one of said sections receives nothing for his money other than the privilege of punching a number from the board. The said boxes of candy are worth more than 5 cents each and a purchaser who obtains one of the numbers calling for one of the boxes of candy or the last punch in one of said sections 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 said punch separated from the board. The said candy is thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various assortments of candy, 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 directly or indirectly purchase respondents' said candy, expose and sell the same to the purchasing public, in accordance with the sales plans aforesaid. 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 plans hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their candy and the sale of said candy by and through the use thereof and by the aid of said sales plans or methods is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candy to the purchasing public by the methods and plans hereinabove set forth involves a game of chance or the sale of a chance to procure additional pieces of candy without additional cost or boxes of candy at prices which are 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 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 respondents in the sale and distribution of their candy and the element of chance involved therein and are thereby induced to buy and sell respondents' candy in preference to candy of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents, because of said game of chance has a tendency and capacity to and does unfairly divert trade 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 methods. As a result thereof, substantial injury is being done and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 14, 1940, issued and on November 16, 1940, served its complaint in this proceeding upon respondents, Robert V. Bierhaus and Edward G. Bierhaus, individually and trading as E. Bierhaus & Sons, 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 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. Robert V. Bierhaus and Edward G. Bierhaus are individuals trading as E. Bierhaus & Sons, with their principal office and place of business located at Second and Perry Streets, Vincennes, Ind. Respondents are now, and for more than 9 years last past have been, engaged in the sale and distribution of candy and other confectionery products to wholesale dealers, jobbers, and retail dealers. The respondents cause and have caused said products, when sold, to be transported from their principal place of business in the city of Vincennes, Ind., to purchasers thereof, at their respective points of location, in the various States of the United States other than Indiana and in the District of Columbia. There is now, and for more than 9 years last past has been, a course of trade by respondents in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are and have been in competition with other 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed 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. Respondents distribute and have distributed various push cards and punchboards for use in the sale and distribution of their candy to the consuming public by means of a game of chance, gift enterprise, or lottery scheme. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondents but this is not all inclusive of the various assortments nor does it include all of the details of the several plans which

respondents have been or are using in the sale and distribution of candy by lot or chance.

(*a*) One assortment consists of a number of bars of candy of uniform size and shape and a box of candy together with a device commonly called a push card. The push card contains 60 partially perforated disks and on the face of each of said disks is printed the word "push." Concealed within the said disks are numbers which are effectively concealed from purchasers and prospective purchasers until a push or selection has been made and the selected disk pushed or separated from the card. Sales are 5¢ each. The following legend appears on the face of said card:

VALOMILK DIPS
ADVERTISING MEDIUM 5¢ Per Sale

YOU BUY A FIVE CENT VALOMILK DIP AND GET ONE PUSH FREE

If you push out One of the Following Numbers or Last Push you can exchange (without extra cost) The 5¢ VALOMILK DIP for the MERCHANDISE INDICATED.

No. 13, Four 5¢ VALOMILK DIPS
No. 23, Three 5¢ VALOMILK DIPS
Numbers 5–10–20–25–30–40–50–60
Two 5¢ VALOMILK DIPS
LAST PUSH, LARGE BOX HAND ROLLED CHOCOLATES

The sales of respondents' candy by means of said push card are made in accordance with the above-described legend or instructions. Said bars and boxes of candy are alloted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives one or more bars of candy or a box of candy for the amount of money paid is thus determined wholly by lot or chance.

Respondents sell and distribute and have 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.

(*b*) Another of said assortments consists of 12 boxes of candy, together with a device commonly called a punchboard. Said boxes of candy are 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 a statement or statements informing prospective purchasers that certain specified numbers entitle the

purchasers thereof to receive without additional cost, one of said boxes of candy. The board is also divided into three sections and the person punching the last number in each of the three sections receives one of said boxes of candy. A purchaser who does not qualify by obtaining one of the lucky numbers or the last punch in one of said sections receives nothing for his money other than the privilege of punching a number from the board. The said boxes of candy are worth more than 5 cents each and a purchaser who obtains one of the numbers calling for one of the boxes of candy or the last punch in one of said sections 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 said punch separated from the board. The said candy is thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various assortments of candy, 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 directly or indirectly purchase respondents' said candy, expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. 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 plans hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their candy and the sale of said candy by and through the use thereof and by the aid of said sales plans or methods is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candy to the purchasing public by the methods and plans hereinabove set forth involves a game of chance or the sale of a chance to procure additional pieces of candy without additional cost or boxes of candy at prices which are much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with respondents, 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 respondents in the sale and distribution of their candy and the element of chance involved therein and are thereby induced to buy and sell respondents' candy

in preference to candy of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents, because of said games of chance has a tendency and capacity to and does unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury is being done and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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, Robert V. Bierhaus and Edward G. Bierhaus, individually and trading as E. Bierhaus & Sons, 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 or 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 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. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

PHILIP MORRIS & CO., LTD., INCORPORATED

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

Docket 3865. Complaint, Aug. 5, 1939—Decision, Dec. 31, 1940

Where a domestic corporation engaged, in the United States, in manufacturing, distributing, and selling, among others, its "Philip Morris," "English Ovals," "Marlboro," and "Player's Navy Cut" cigarettes, under corporate name similar to that under which English commercial enterprise involving manufacture and sale of such products had long been carried on by intermediate owners, and as successor to said enterprise, and with wholly owned English subsidiary engaged in business concerned in that country—

(*a*) Featured and emphasized upon the containers of its "Philip Morris" and "English Ovals" that part of its corporate name concluding with abbreviation "Ltd.," and deemphasized and set forth in relatively small type final and concluding word "Incorporated" therein, and set forth also upon containers thereof depictions which closely resembled the British Royal Arms, together with words, as case might be, "Special" and "Selection," or "By Special" and "Appointment," and words "London, W." and words, respectively, "English Blend" and "English Ovals," notwithstanding fact corporation in question was not English, but organized under laws of Virginia, products in question were not of English manufacture, but made in the United States, and it did not hold warrant entitling it to display British Royal Arms, with capacity and tendency, through such under-emphasis of words "Incorporated" or "Inc." in corporate title as set forth on containers in question, and enhanced through use of devices above described and such expressions as "English Blend," "English Ovals," "London, W.," and "By Special Appointment," to induce belief that it was an English corporation, and with capacity and tendency further, through use on packages in question of depiction closely resembling British Royal Arms, accompanied by other things indicative of English origin or manufacture, or of an English manufacturer, and including use of such expression as "By Special Appointment," to induce belief that it held royal warrant entitling it to display said Royal Arms, and that cigarettes contained in packages upon which expression appeared were of English manufacture;

(*b*) Made use of expression "English Blend" in referring to its said "Philip Morris" cigarettes, ingredients of which included Latakia tobacco, much used by English manufacturers of pipe smoking mixtures in England and not used to any appreciable extent by other American manufacturers in their popular priced cigarettes, and of expression "English Ovals" in designating its brand, shaped in oval form, as customarily are shaped in England the better or more expensive cigarettes, and set forth upon containers of both, as aforesaid noted, expression "London, W.," notwithstanding fact both brands were made by it in Richmond, Va., and it had no connection with "London, W" district of London, England, other than place of business there of its wholly owned English subsidiary, with capacity and tendency,

through use of expressions "English Ovals" and "English Blend," lacking explicit and equally conspicuous disclosure of actual country of manufacture, to engender belief that cigarettes thus designated and described were of English manufacture, and, through use of "London, W," with further capacity and tendency so to do;

(c) Set forth also upon containers of its "English Ovals," words "FACTORIES London, Cairo, Hamilton, Canada, Richmond, Va.," and "Agents and Depots all over the world," and set forth upon containers of its "Philip Morris" cigarettes, along with other words and depictions above set forth, statement "Established over 80 years," when in fact, while latter phrase was not without justification, it did not operate factories either in Canada or Egypt, as above represented, nor maintain warehouses all over the world; and

(d) Set forth also upon containers of its domestically made "Marlboro" brand, depiction of a heraldic device or design prominently displayed, and which closely resembled British Royal Arms, and made use of designation "Player's Navy Cut" upon its thus captioned brand, and of such matter on labels thereof, which in many respects were identical with, and in others substantially similar to, those set forth on labels and containers of the English cigarettes there made, and generally and largely sold throughout the British Isles under said name, and in comparatively small quantities only in the United States, in which were made said brand according to same formula as the "Player's" of English origin, with capacity and tendency to engender belief that its said thus designated "Player's Navy Cut" cigarettes were, in the absence of an explicit and conspicuous disclosure of actual country of manufacture, of English make;

With result that many persons purchased said cigarettes in and by reason of their belief, induced by said legends, statements and depictions, that it had been established over 80 years, was an English corporation, held a warrant entitling it to display British Royal Arms, and operated factories in London and Hamilton and Richmond, and maintained warehouses all over the world, and that its "Player's Navy Cut" cigarettes were same as those generally and widely sold under that name in England, and that all four aforesaid brands were made in said country, for which, as foreign-made goods and articles and imported, there is a preference on the part of a portion of the purchasing public, and particularly so with respect to goods and articles upon which are displayed British Royal Arms, use of which is well known to many members of purchasing public as meaning that manufacturer holds warrant entitling him to display said arms, and that possession thereof indicates holder has enjoyed patronage of British royal family or member thereof:

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

Mr. Randolph W. Branch for the Commission.

McCanliss & Early and *Mr. George P. Brauburger*, of New York City, 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 Philip Morris & Co., Ltd., Incorporated, 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, Philip Morris & Co., Ltd., Incorporated, is a corporation organized and existing under the laws of the State of Virginia, and having an office and principal place of business at 119 Fifth Avenue, in the city and State of New York, and a factory and place of business in the city of Richmond in the State of Virginia.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, distributing, and selling cigarettes of various names or brands, among which are "Philip Morris," "English Oval," "Player's Navy Cut," and "Marlboro," and other tobacco products.

Respondent causes, and has caused, its said cigarettes and other products, when sold, to be transported from its said places of business in the States of New York and Virginia to purchasers thereof located in various States of the United States, other than the States of New York and Virginia, and in the District of Columbia. Respondent maintains, and since its organization in 1919 has maintained, a course of trade in cigarettes and tobacco 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 and for the purpose of inducing the purchase of its cigarettes and other products, respondent causes certain printed matter and depictions indicating their source or origin, as set forth and described below, to be placed upon the containers of said cigarettes and other tobacco products.

Upon the "Philip Morris" container appear the words and depiction set forth below:

Established over 80 years
Philip Morris & Co., Ltd.,
Incorporated.

The words last quoted, except the word "Incorporated," are arranged in an arc, conspicuously placed and printed in heavy black type, the capital letters being approximately six thirty-seconds of an inch in height, the smaller letters in the abbreviations approximately three

thirty-seconds of an inch in height, and the remaining letters approximately five thirty-seconds of an inch. The word "Incorporated" is printed across a chord of the arc in letters approximately one thirty-second of an inch in height in a light black type.

A depiction of a heraldic device or design, placed in the approximate center, which closely simulates the British Royal Arms. To the left and right of the device appear respectively the words "Special" and "Selection," the capital letters being approximately one-sixteenth of an inch and the others approximately one thirty-second of an inch in height.

London, W.

This appears immediately below the said device, the capital letters being approximately one-sixteenth of an inch and the others approximately one thirty-second of an inch in height.

English Blend

Upon the "English Ovals" container appear the words and depiction set forth below:

Philip Morris & Co., Ltd.

Incorporated.

The words quoted above, except for the word "Incorporated," are lettered with capitals approximately three-sixteenths of an inch in height, smaller letters in the abbreviations approximately one-sixteenth of an inch in height, and the remainder approximately one-fourth of an inch in height. The lettering of "Incorporated" is minute.

English Ovals

A depiction of a heraldic device or design, conspicuously placed, which closely simulates the British Royal Arms. To the left and right of the device appear respectively the words "By Special" and "Appointment," or "Special" and "Selection," the capital letters being slightly over one-sixteenth of an inch in height and the small letters slightly less than one-sixteenth of an inch in height.

London, W.

This appears immediately below the said device in letters approximately three thirty-seconds of an inch in height.

FACTORIES

London, Cairo, Hamilton, Canada,
Richmond, Va.

Agents and Depots all over the world

Philip Morris & Co., Ltd., Inc.,
New York, U. S. A.

Upon the "Marlboro" container appears a depiction of a heraldic device or design, prominently displayed, which closely simulates the British Royal Arms.

Upon the "Player's Navy Cut" container appear the words and depiction set forth below:

A marine scene upon which is superimposed a life ring bearing conspicuously the words "Player's Navy Cut." In the center of the ring is a depiction of the head and shoulders of a bearded sailor in a uniform which, so far as it is shown, is such as was once used in the British Royal Navy.

A depiction of a pretentious edifice identified as "Nott" Castle."

Established by
John Player & Sons,
England.

PAR. 4. Cigarettes known as "Player's Navy Cut," manufactured in England, are generally and largely sold throughout the British Isles and the Dominion of Canada, and in the United States. The packages in which they are contained and sold are in many respects identical with, in others substantially similar to, and as a whole are close simulations of, those in which the "Player's Navy Cut" cigarettes manufactured by respondent are offered and sold.

PAR. 5. Through the use of the statements and depictions hereinabove set out and described, and others similar thereto not herein set forth, respondent has represented: That it has been established for over 80 years; that it is an English corporation; that it holds a warrant entitling it to display the British Royal Arms; that it operates factories, in London, England; Cairo, Egypt; Hamilton, Canada; and Richmond, Va.; that it maintains warehouses all over the world; that its "Philip Morris," "English Ovals," and "Player's Navy Cut" cigarettes are manufactured in England, and that the last named are manufactured by John Player & Sons and are the same cigarettes as those generally and widely sold under that name in England.

PAR. 6. The aforesaid representations used and disseminated as aforesaid by respondent are misleading and untrue. In truth and in fact respondent has not been established for 80 years, and is not an English corporation. It does not hold a warrant entitling it to display the British Royal Arms. It does not operate factories in Cairo, Egypt, and in Hamilton, Canada. Such manufacturing as it may conduct in England is carried on through a subsidiary corporation organized and existing under the laws of England. It does not maintain warehouses all over the world. Its "Philip Morris," "English Ovals," and "Player's Navy Cut" cigarettes are not manufactured in England. The last-named cigarettes are not manufactured by John Player &

Sons, nor are they the same cigarettes as those generally and widely sold in England under that name.

PAR. 7. There is a preference on the part of a portion of the purchasing public for goods and articles which are manufactured in foreign countries and imported into the United States. This is particularly true with respect to goods and articles upon which are displayed the British Royal Arms, the use of which is well known to many members of the purchasing public to mean that the manufacturer thereof holds a warrant entitling him to display the said arms and that the possession of such a warrant indicates that the holder has enjoyed the patronage of the British Royal Family or a member thereof.

PAR. 8. The foregoing representations made by respondents with respect to the place of manufacture of their goods, the status of respondent as the holder of a British royal warrant, the length of time which it has been in business, the identity of the manufacturer of its goods and the place of its incorporation are calculated to, and have a tendency to, and do, mislead a substantial part of the purchasing public into the erroneous and mistaken belief that such untrue and misleading statements and claims are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's goods.

PAR. 9. 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 1939, issued and served its complaint in this proceeding upon said respondent, Philip Morris & Co. Ltd., Incorporated, a corporation, charging it with the use of unfair acts and practices in commerce in violation of the provisions of said act. On September 15, 1939, the respondent filed its answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondent's counsel, Lee McCanliss, 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, Philip Morris & Co. Ltd., Incorporated, is a corporation organized and existing under the laws of the State of Virginia, and having an office and principal place of business at 119 Fifth Avenue, in the city and State of New York, and a factory and place of business in the city of Richmond in the State of Virginia.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, distributing, and selling cigarettes of various names or brands, among which are "Philip Morris," "English Ovals," "Player's Navy Cut," and "Marlboro," and other tobacco products.

Respondent causes, and has caused, its said cigarettes and other products, when sold, to be transported from its said places of business in the States of New York and Virginia to purchasers thereof located in various States of the United States, other than the States of New York and Virginia, and in the District of Columbia. Respondent maintains, and since its organization in 1919 has maintained, a course of trade in cigarettes and tobacco 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 and to influence the purchase of its cigarettes, respondent causes to be placed upon the containers of said cigarettes, as set forth and described below, certain printed matter and depictions.

Upon the "Philip Morris" container appear the words and depiction set forth and described below:

Established over 80 years
Philip Morris & Co., Ltd.,
Incorporated

The words last quoted, except the word "Incorporated", are arranged in an arc, conspicuously placed and printed in heavy black type, the capital letters being approximately six thirty-seconds of an inch in height, the smaller letters in the abreviations approximately three thirty-seconds of an inch in height, and the remaining letters approxi-

mately five thirty-seconds of an inch. The word "Incorporated" is printed across a chord of the arc in letters approximately one thirty-second of an inch in height in a light black type.

A depiction of a heraldic device or design, placed in the approximate center, which closely resembles the British Royal Arms. To the left and right of the device appear respectively the words "Special" and "Selection," the capital letters being approximately one sixteenth of an inch and the other approximately one thirty-second of an inch in height.

Immediately below this depiction appear the words "London, W." and "English Blend," the first in capital letters approximately one-sixteenth of an inch and the others approximately one thirty-second of an inch in height, and the second in conspicuous capital letters of white.

Upon the "English Ovals" container appear the words and depiction set forth and described below:

English Ovals
Philip Morris & Co. Ltd.
Incorporated.

The words last quoted above, except for the word "Incorporated," are lettered with capitals approximately three-sixteenth inch in height, smaller letters in the abbreviations approximately one-sixteenth inch in height, and the remainder approximately one-fourth inch in height. The lettering of "Incorporated" is minute.

A depiction of a heraldic device or design, conspicuously placed, which closely resembles the British Royal Arms. To the left and right of the device appear respectively the words "By Special" and "Appointment," or "Special" and "Selection," the capital letters being slightly over one-sixteenth inch in height and the smaller letters slightly less than one-sixteenth inch in height.

Immediately below the depiction appears "London, W." in letters approximately three thirty-second inch in height.

The following also appear upon the container:

FACTORIES
London, Cairo, Hamilton, Canada,
Richmond, Va.

Agents and Depots all over the world

Philip Morris & Co., Ltd., Inc.,
New York, U. S. A.

Upon the "Marlboro" container appears a depiction of a heraldic device or design, prominently displayed, which closely resembles the British Royal Arms.

Upon the "Player's Navy Cut" container appear the words and depiction set forth and described below:

Upon the front a marine scene upon which is superimposed a life ring bearing conspicuously the words "Player's Navy Cut." In the center of the ring is a depiction of the head and shoulders of a bearded sailor in a uniform which, so far as it is shown, is such as was once used in the British Royal Navy.

Upon the back a depiction of a pretentious edifice identified "Nott" Castle," and the words:

Established by
John Player & Sons,
England

PAR. 4. Cigarettes known as "Player's Navy Cut," manufactured in England, are generally and largely sold throughout the British Isles and in comparatively small quantities in the United States; "Player's" cigarettes of Canadian manufacture are sold in the Dominion of Canada. The labels on the packages in which they are contained and sold are in many respects identical with, in others substantially similar to, and as a whole are close simulations of, those in which the "Player's Navy Cut" cigarettes of American manufacture distributed by respondent are offered and sold. The Canadian "Player's" are not sold in the United States. The English "Player's" are sold in the United States only in tins containing 50 cigarettes or more, whereas respondent's "Player's" are sold in cardboard packages containing 20 cigarettes.

PAR. 5. Many persons have purchased respondent's said cigarettes by reason of their belief, induced by the legends, statements, and depictions hereinabove set forth, that respondent has been established over 80 years; that it is an English corporation; that it holds a warrant entitling it to display the British Royal Arms; that it operates factories in London, Egypt, Hamilton, Canada, and Richmond, Va.; that it maintains warehouses all over the world; that its "Philip Morris," "English Ovals," "Marlboro," and "Player's Navy Cut" cigarettes are manufactured in England, and that the last named are the same cigarettes as those generally and widely sold under that name in England.

PAR. 6. As early as 1846, one Philip Morris conducted, in London, England, a business in the manufacture, sale, and export of tobacco products. After his death in or about 1873, his widow and his brother Leopold conducted the business as a partnership until 1880, when Leopold acquired the widow's interest. The business was incorporated by Leopold in 1888 under the name of Philip Morris & Co., Ltd. In 1894, the business was transferred to a new corporation of the same

name and one William Curtis Thomson, who had previously been connected with the enterprise, became the dominating influence in it.

The business was reincorporated under the same name in 1920, and continued to be dominated by the Thomson interests until 1937.

The different English companies exported cigarettes to the United States, the first importation being not later than 1872, through an exclusive sales agency, Eckmeyer and Co.

In 1902, a New York corporation, Philip Morris & Co., Ltd., was organized, the Eckmeyer interests and the English interests each owning or controlling half of the capital stock. This company continued to import English made "Philip Morris" cigarettes until 1932, and also began and continued the manufacture of cigarettes in the United States. To this company the English company assigned its business, labels, trade-marks, and good will in the United States and its colonies.

In 1907, another New York corporation, also called Philip Morris & Co., Ltd., was organized, which acquired all the assets of the predecessor company. All of its stock was owned by the English company and the Thomson interests, and the bonds by the Eckmeyer interests. Mr. Thomson was president of this new company, dominated its policies and spent much time in New York attending to its business.

In 1919, the respondent, a Virginia corporation, was organized. It acquired all the assets of the New York corporation except cash and marketable securities, and the New York corporation went out of business.

In 1937, respondent, through a wholly owned English subsidiary, Philip Morris & Company, Limited, acquired the entire business of the then existing English company except for cash and marketable securities, which it has since conducted.

Upon these facts, although a number of corporate entities have intervened between the original founder and the respondent, there has been so unbroken a continuity in the commercial life of the enterprise that the Commission cannot find respondent's use of the phrase "Established over 80 years" to be without justification.

PAR. 7. The belief by purchasers of respondent's cigarettes that respondent is an English corporation is attributable in part to the substantially greater prominence given to the abbreviation "Ltd." in its corporate name as set forth on certain of respondent's labels, as compared to that given to the word "Incorporated" or its abbreviation, "Inc.," which is also a part of the corporate name. The effect of this underemphasis is enhanced by the use of a device resembling the British Royal Arms and expressions such as "English Blend," "English Ovals," "London, W" and "By Special Appointment."

The Commission therefore finds that such underemphasis of "Incorporated" or "Inc." has the tendency and capacity to induce the belief that respondent is an English corporation, although in fact it is organized under the laws of the State of Virginia.

PAR. 8. The Commission also finds that the use on packages containing the respondent's "Philip Morris," "English Ovals," and "Marlboro" cigarettes of a depiction bearing a close resemblance to the British Royal Arms, has the capacity and tendency to induce the belief that the respondent holds a royal warrant entitling it to display those arms, when it is accompanied, as here, by other things indicative of English origin or of an English manufacturer. The use of such a depiction has the capacity and tendency to engender the belief that cigarettes contained in the packages upon which it appears are of English manufacture as does the use of the expression "By Special Appointment" when used in connection therewith.

In fact, the cigarettes are not of English manufacture, nor does respondent hold a warrant entitling it to display the British Royal Arms. All of the various brands of cigarettes involved in this proceeding are manufactured in the United States.

PAR. 9. Respondent does not operate factories either in Hamilton, Canada or in Cairo, Egypt, as represented. Through its wholly owned subsidiary, Philip Morris & Co., Limited, it manufactures cigarettes in England, but such cigarettes are not sold in the United States. Respondent does not, as it has claimed, maintain warehouses all over the world.

PAR. 10. Respondent's, "English Ovals," cigarettes are made in an oval shape. At the time this brand was put on the American market, the oval shape was, and still is, in England, the usual shape for the better or more expensive cigarettes.

Respondent's, "Philip Morris," one of the so-called "popular price" brands of cigarettes, described as "English Blend," contains, among other tobaccos, one known as Latakia, a mild tobacco grown in Syria and having a peculiar and distinctive aroma. These cigarettes contain this tobacco in a quantity sufficient to be significant in the finished product. It is generally favored as a component of pipe smoking mixtures in England and is much used by English manufacturers of such mixtures. It is not used to any appreciable extent by other American manufacturers in their popular priced cigarettes.

Both brands are manufactured by respondent at Richmond, Va.

The Commission finds that the use of the expressions "English Ovals" and "English Blend" in the absence of an explicit and equally conspicuous disclosure of the actual country of manufacture, has the capacity and tendency to engender the belief that the cigarettes so designated or described are of English manufacture.

The Commission further finds that the use of the expression "London, W" has the capacity and tendency to engender the belief that the cigarettes contained in packages upon which it appears are of English manufacture. In fact, respondent has no connection with the "London, W", district of the city of London, England, except that its wholly owned English subsidiary has a place of business there. In consequence the Commission finds that the use of this expression in the manner indicated herein is wholly without justification in fact.

PAR. 11. The package in which respondent's American made "Player's Navy Cut" cigarettes are sold closely resembles that in which cigarettes of the same name of English manufacture as widely sold in England and to an extent in the United States.

Respondent's, "Player's Navy Cut," cigarettes are manufactured for it by The American Tobacco Co. in the United States. In September 1901, Imperial Tobacco Co. of Great Britain and Ireland was organized through a combination of a large number of English companies manufacturing and distributing tobacco products, among them John Player & Sons. At that time Imperial Tobacco Co. of Great Britain and Ireland acquired the name "Player's Navy Cut." In September 1902, Imperial Tobacco Co. of Great Britain and Ireland entered into an agreement with The American Tobacco Co. providing, among other things, that Imperial Tobacco Co. transferred all of its brands for use in the United States to The American Tobacco Co., which was to have the sole right to manufacture and distribute "Player's Navy Cut" cigarettes in the United States.

On July 7, 1922, the American Tobacco Co. conveyed a number of trade-marks and trade names, including those containing the word "Player's," to Philip Morris-International Corporation. On June 21, 1926, Philip Morris-International Corporation reconveyed all of the brands covered by the agreement of July 7, 1922, and immediately thereafter The American Tobacco Co. reconveyed brands containing the word "Player's" to Philip Morris-International Corporation, the latter agreeing that such cigarettes should be manufactured for it by The American Tobacco Co. as long as the latter desired to make such cigarettes. At this time Philip Morris-International Corporation was a wholly owned subsidiary of respondent, and, upon the dissolution of Philip Morris-International Corporation on June 30, 1926, its brands and trade-marks, including those of which the word "Player's" formed a part, were assigned to respondent.

The labels on the packages in which respondent sells its American-made "Player's Navy Cut" cigarettes closely resemble the labels upon the packages in which "Player's Navy Cut" cigarettes manufactured in England and the Dominion of Canada are sold.

The American Tobacco Co. purchases from Imperial Tobacco Co. of Great Britain and Ireland a number of "Player's Navy Cut" cigarettes of English manufacture, which it sells to respondent, and which in turn respondent distributes. These, however, are not imported in cardboard packs resembling those in which respondent distributes its "Player's Navy Cut" cigarettes of American manufacture, but are in tins of 50 or more. No American-made "Player's" are sold in tins. No Canadian-made "Player's" are sold in the United States.

The "Player's" made in the United States are made according to the same formula as those of English origin, have the same characteristics, and to the ordinary consumer are indistinguishable. There is no American preference for cigarettes manufactured by the original John Player or his successors, and such preference as exists in the United States for the English-made "Player's" is due to their English origin.

We find that the use of the package described herein for respondent's American-made "Player's Navy Cut" cigarettes has the capacity and tendency to engender the belief that such cigarettes are of English manufacture, in the absence of an explicit and conspicuous disclosure of the actual country of manufacture.

PAR. 12. There is a preference on the part of a portion of the purchasing public for goods and articles which are manufactured in foreign countries and imported into the United States. This is particularly true with respect to goods and articles upon which are displayed the British Royal Arms, the use of which is well known to many members of the purchasing public to mean that the manufacturer thereof holds a warrant entitling him to display the said arms and that the possession of such a warrant indicates that the holder has enjoyed the patronage of the British Royal Family or a member thereof.

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

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, Philip Morris & Co. Ltd., Incorporated, 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 cigarettes in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the phrase "London, W" or any other words or phrases of similar import in connection with the advertising or packaging of any cigarettes which were in fact manufactured in any place other than England.

2. Using the word "English" or other words of similar import to in any way refer to the shape or blend of any cigarettes which were in fact manufactured in any place other than England, unless in immediate connection therewith the place of manufacture is clearly and conspicuously set forth.

3. Using any depiction of the British Royal Arms or any simulation thereof or the words "Special Appointment" or "By special appointment."

4. Using the word "Limited" or its abbreviation "Ltd." as part of its corporate name, or in any other manner, unless the word "Incorporated" or its abbreviation "Inc." appears in letters of the same size and boldness as do "Limited" or "Ltd."

5. Representing that respondent operates factories or warehouses in London, England, Cairo, Egypt, or Hamilton, Canada, or in any other place in which it does not operate such factories or warehouses.

6. Using the name "Player's Navy Cut" as a designation of any cigarette not manufactured in England, unless in immediate connection with such name the country of manufacture of said cigarettes is set forth in letters of the same size or conspicuousness as is the trade name "Player's Navy Cut."

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

DAVID H. FULTON, DOING BUSINESS AS VENDOL COMPANY

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

Docket 3895. Complaint, Sept. 16, 1939—Decision, Dec. 31, 1940

Where an individual engaged in interstate sale and distribution of his "Vendol" medicinal preparation for constipation and related conditions; in advertisements thereof which he 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 which were distributed in commerce in the various States, and through radio broadcasts of extra-state audience, and through pamphlets, booklets, and advertising copy setting forth testimonial letters, and which advertisements were intended and likely to induce purchase of his said product—

(*a*) Represented that said "Vendol" was a remedy or cure and effective treatment for constipation, stomach disorders, liver ailments, muscle, joint and body pains, rheumatism, headaches, dizziness, excess acidity, gas, cramps, indigestion, skin disorders, bad breath, palpitation, bloating, stiffness, and declining health; and in all cases brought relief to sufferers from constipation, stomach and liver disorders, pains in muscles and back, headache and rheumatism;

Facts being that it was not a remedy or cure for the diseases or conditions of which stomach disorders and other ailments and conditions above set forth are symptoms, and had no therapeutic value in treatment of such symptoms or conditions in excess of that afforded by a laxative with mild diuretic and slightly antiacid effect, and, while it might give temporary relief from constipation and from stomach and liver disorders, muscular and back pains and headaches, when such conditions were definitely due to constipation or need of a diuretic, it did not in all cases bring relief to sufferers from constipation and various other disorders and ailments above enumerated;

(*b*) Represented that it assured good digestion and enabled one to eat all kinds of food without fear of acid indigestion and prevented acidity, gas, cramps, burning stomach, and constipation and was a tonic and beneficial in toning system, and soothed nerves and relieved and ended sleeplessness or insomnia and strengthened stomach and digestive organs, was an appetizer and increased strength and energy, promoted new vigor and made one seem years younger;

Facts being it would not accomplish various results claimed for it as above set forth, was not a tonic, did not beneficially affect nervousness or relieve sleeplessness, strengthen stomach or digestive organs or promote vigor and make one appear younger, and had little value in stimulating appetite and was not an appetizer;

(*c*) Represented that it would overcome or cure irregularity and that constipation or irregularity of the bowels is the cause of indigestion, skin disorders,

gas, dizzy spells, acidity, headaches, heartburn, sleeplessness, dyspepsia, heart fluttering, and liver ailments and other similar conditions, and that the majority of common aches, pains, and disorders are due entirely to constipation, and that need for a diuretic is responsible for back, joint, muscular back pains, and stiffness;

Facts being constipation is not usually or generally cause of indigestion and other ailments or conditions set forth and of common aches and pains and other similar conditions, and said "Vendol" had no therapeutic value in treatment of backaches, joint, muscular, or other pains or stiffness in excess of that afforded by a mild diuretic in those cases in which such conditions are symptoms of those kidney disorders which respond to such a diuretic, and symptoms aforesaid are often indicative of other disorders which will not respond thereto; and

(*d*) Represented that said "Vendol" would relieve numerous symptoms which he listed in various advertisements, and disorders and ailments of which such symptoms were indicative, through such typical advertisements disseminated by him, as "Relieves many troubles such as dizziness, headaches, spots before the eyes, coated tongue, foul breath, cramps, poor digestion, heartburn, dyspepsia, shortness of breath, heart flutterings, heavy feeling in the pit of the stomach, lump in the throat, nervousness, poor sleep—when due to constipation," with tendency and capacity to cause erroneous belief that said product would relieve various symptoms above enumerated with exception of last, irrespective of whether or not due to constipation;

Facts being preparation in question would have no therapeutic value with respect to relieving any such symptoms, or disorders with which they were connected, except when due to constipation, which is often not the case:

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.

Barton, Wilmer, Bramble, Addison & Semans, of Baltimore, Md., 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 David H. Fulton, an individual, trading as Vendol 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, David H. Fulton, is an individual doing business under the trade name of the Vendol Co., with his principal office and place of business located at 1 West Biddle Street, in the city of Baltimore, State of Maryland.

Respondent is now, and for more than 1 year last past, has been engaged in the sale and distribution of a certain medicinal preparation known as "Vendol" which is offered for sale and sold as a treatment for constipation and related conditions. In the course and conduct of his business respondent causes said medicinal preparation when sold to be transported from his place of business in the State of Maryland to the purchasers thereof at their respective locations in various states of the United States other than the State of Maryland and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said product, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Vendol has always brought a most needed relief to thousands of persons suffering from constipation, stomach troubles and liver ailments as well as pains in the back, muscles and joints, rheumatism, headaches, etc.

Buy a bottle of Vendol, the efficacious remedy that assures good digestion, prevents acidity, gas, cramps and burning stomach. Vendol is composed of 12 different herbs soft alkalines that tonify your system and prevents all these ailments.

Vendol will aid in strengthening the stomach. Vendol brings calm and peace to jumpy nerves. Vendol will make you look better, feel better and you will seem years younger.

Sallow, acned skin often is due to irregularity so you will no doubt be interested to learn that you can help improve the condition of your skin by getting at the cause of your skin disorders—irregularity. Getting relief from these unfortunate ailments is often attained when you try Vendol through the elimination of the poisons that cause skin eruptions. Take Vendol for a while and see if your complexion doesn't improve noticeably.

Do you ever get out of bed in the morning feeling irritated, in bad humor, have headaches, feel dizzy, with your tongue coated and breath bad? If so, you need Vendol. It stimulates the appetite so you can enjoy all your favorite foods.

Let Vendol give you the relief you need to overcome irregularity and return to normal.

It acts on the bowels as a laxative and helps clear out, old, foul substances that often cause headaches, dizzy spells, skin eruptions, boils and pimples. Brings forth gas, relieves gas pains, bloating, and palpitation. It is a mild diuretic to the kidneys, relieving backache, pains in muscles, and stiffness. Vendol is a splendid appetizer which in turn creates strength and energy, * * *

You see Vendol works on the true basic principal that irregularity is often responsible for the aches and pains suffered because of indigestion, gaseousness, dizzy spells and super-acidity.

Vendol activates the function of the intestines * * * strengthens the digestive organs * * * and produces a marvelous effect on the kidneys, giving you complete elimination without causing pain * * * In taking Vendol, you will regain your rosy complexion, and new vigour * * *

Vendol enables many people to enjoy foods of all kinds, without fear or acid indigestion and common aches and pains due to irregularity.

In addition to the foregoing advertisements the respondent disseminates false advertisements in the same manner as set out above by means of purported testimonial letters which the respondent places in pamphlets, booklets and advertising copy and in continuities broadcast from radio stations. Among and typical of the false statements and representations disseminated as aforesaid by respondent by use of purported testimonial letters in its advertising are the following:

I was troubled continually with an upset stomach and was always taking some kind of a laxative. This made me feel dizzy, caused many sleepless nights and made me terribly run down. Vendol proved to be an excellent laxative and soon relieved a great deal of my suffering. I now have a good appetite and sleep well since my nerves stopped bothering me.

I have been suffering a long time from terrible aching pains in my arms, back and legs. My shoulders ached frequently. So much so that I lost valuable sleep and was in misery most of the time. A friend recommended Vendol saying that it had done a great deal for him. Vendol and the little Vendol laxative tablets gave such fine relief from upset stomach and proved to be such a splendid diuretic that I am no longer troubled by aches and pains, headaches or nervousness due to irregularity.

Complaint

For several years my health had been declining and although I tried many different ways to restore it, nothing seemed to do much good. I heard about Vendol and decided to try it. To my surprise I began to feel better from my very first bottle. Vendol and the little Vendol laxative tablets gave truly remarkable relief. The terrible dizzy spells, headaches and other spells I used to have have now disappeared. My nerves are now calm and sleep comes easily.

My back seemed to ache just about all the time and my right arm was practically useless. Also I had to be very careful about what I ate. Vendol and the little Vendol tablets worked easily and pleasantly as a laxative and I was soon relieved of my distress after taking my first bottle of Vendol.

I never had a remedy give such marvelous relief from the distress of after eating and acid stomach. The first few treatments relieved the cramps and bloated feeling and now I can eat anything I desire without fear of the after effects.

I was so dizzy at times that I'd have to hold on to something to steady myself, little spots danced before my eyes, my skin was sallow and full of little pimples. After Vendol relieved my constipation these troubles all disappeared and I feel great now.

After Vendol relieved my constipation all signs of indigestion, gas, upset stomach, headache, biliousness, in fact all my old troubles passed away and I actually feel better today than I have in years.

PAR. 3. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative or therapeutic properties of respondent's preparation, respondent has represented and does now represent, directly and indirectly, that his preparation "Vendol": (*a*) is a remedy or cure and an effective treatment for constipation, stomach disorders, liver ailments, muscle, joint and body pains, rheumatism, headaches, dizziness, excess acidity, gas, cramps, indigestion, skin disorders, bad breath, palpitation, bloating, stiffness and declining health; (*b*) in all cases brings relief to sufferers from constipation, stomach and liver disorders, pains in muscles and back, headache and rheumatism; (*c*) assures good digestion and enables one to eat all kinds of food without fear of acid indigestion; (*d*) prevents acidity, gas cramps, burning stomach and constipation; (*e*) is a tonic and benefits and tones the system; (*f*) soothes the nerves and relieves and ends sleeplessness and insomnia; (*g*) strengthens the stomach and digestive organs; (*h*) is an appetizer and stimulates the appetite and increases strength and energy and promotes new vigor and makes one seem years younger; (*i*) will overcome or cure "irregularity"; and

That constipation or "irregularity" is the cause of indigestion, skin disorders, gas, dizzy spells, acidity, headaches, heartburn, sleeplessness, dyspepsia, heart fluttering, liver ailments and other similar conditions, and

That the need for a diuretic is responsible for back, joint, muscular, and other pains and stiffness and

That a majority of common aches, pains, and disorders are due entirely to constipation.

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 Vendol is not a remedy or cure, or an effective treatment for constipation, stomach disorders, liver ailments, muscle, joint and body pains, rheumatism, headaches, dizziness, excess acidity, gas, cramps, indigestion, skin disorders, bad breath, palpitation, bloating, stiffness, or declining health. It does not in all cases bring relief to sufferers from constipation, stomach and liver disorders, muscular and back pains, headaches, nor rheumatism. Its use does not assure or insure good digestion or enable one to eat all kinds of food and be free from acid indigestion. It does not prevent acidity, gas, cramps, burning stomach or constipation. It is not a tonic. It does not generally soothe the nerves or relieve sleeplessness and insomnia. It does not strengthen the stomach and digestive organs and its use does not promote new vigor or make one appear younger. It is not an appetizer and it does not stimulate the appetite. It will not overcome or correct "irregularity." Constipation is not generally or usually the cause of indigestion, skin disorders, gas, dizzy spells, acidity, headaches, heartburn, sleeplessness, dyspepsia, heart fluttering, liver ailments and other similar conditions and the need for a diuretic is not generally responsible for back aches, joint, muscular and other pains or stiffness. Constipation is not generally or in a majority of cases the direct cause of common aches and pains.

In truth and in fact the therapeutic properties of Vendol are limited to that of a laxative with mild diuretic and antiacid effects.

PAR. 4. In certain of his advertising the respondent lists symptoms which are attributable to various diseases with the representation that his said preparation will relieve or cure such symptoms if due to constipation. By this means the respondent represents that his said preparation is an effective treatment for various disorders which are not in fact related to or connected with constipation and upon which respondent's preparation will have no curative or therapeutic effect. Typical of this practice is the use of the following statement by the respondent in his advertising:

Relieves many troubles such as dizziness, headaches, spots before the eyes, coated tongue, foul breath, cramps, poor digestion, heartburn, dyspepsia, shortness of breath, heart flutterings, heavy feeling in the pit of the stomach,

lump in the throat, nervousness, poor sleep—when due to constipation. Vendol is a mild diuretic to the kidneys and a wonderful appetizer.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said medicinal preparation has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and that said preparation is a cure or remedy for various disorders for which it has little or no therapeutic value, and induces, or is likely to induce, directly or indirectly, the purchase by the public, of respondent's medicinal preparation containing drugs.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 16, 1939, issued its complaint against respondent and caused such complaint to be served as required by law, charging respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. On October 4, 1939, 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, William R. Semans, 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, David H. Fulton, is an individual doing business under the trade name of the Vendol Co., with his principal office and place of business located at 1 West Biddle Street, in the city of Baltimore, State of Maryland.

Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain medicinal preparation known as "Vendol," constituting a drug, or containing drugs, as defined in the Federal Trade Commission Act, which is offered for sale and sold as a treatment for constipation and related conditions. In the course and conduct of his business respondent causes said medicinal preparation, when sold, to be transported from his place of business in the State of Maryland to the purchasers thereof at their respective locations in various States of the United States other than the State of Maryland and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Vendol has always brought a most needed relief to thousands of persons suffering from constipation, stomach troubles and liver ailments as well as pains in the back, muscles and joints, rheumatism, headaches, etc.

Buy a bottle of Vendol, the efficacious remedy that assures good digestion, prevents acidity, gas, cramps, and burning stomach. Vendol is composed of 12 different herbs soft alkalines that tonify your system and prevents all these ailments.

Vendol will aid in strengthening the stomach. Vendol brings calm and peace to jumpy nerves. Vendol will make you look better, feel better and you will seem years younger.

Sallow, acned skin often is due to irregularity so you will no doubt be interested to learn that you can help improve the condition of your skin by getting at the cause of your skin disorders—irregularity. Getting relief from these unfortunate ailments is often attained when you try Vendol through the elimination of the poisons that cause skin eruptions. Take Vendol for a while and see if your complexion doesn't improve noticeably.

Do you ever get out of bed in the morning feeling irritated, in bad humor, have headaches, feel dizzy, with your tongue coated and breath bad? If so, you need Vendol. It stimulates the appetite so you can enjoy all your favorite foods.

Let Vendol give you the relief you need to overcome irregularity and return to normal.

It acts on the bowels as a laxative and helps clear out, old, foul substances that often cause headaches, dizzy spells, skin eruptions, boils and pimples. Brings forth gas, relieves gas pains, bloating, and palpitation. It is a mild diuretic to the kidneys, relieving backache, pains in muscles, and stiffness. Vendol is a splendid appetizer which in turn creates strength and energy, * * *

You see, Vendol works on the true basic principal that irregularity is often responsible for the aches and pains suffered because of indigestion, gaseousness, dizzy spells and superacidity.

Vendol activates the function of the intestines * * * strengthens the digestive organs * * * and produces a marvelous effect on the kidneys, giving you complete elimination without causing pain * * * In taking Vendol, you will regain your rosy complexion, and new vigour * * *

Vendol enables many people to enjoy foods of all kinds, without fear of acid indigestion and common aches and pains due to irregularity.

In the course of his business, respondent has similarly disseminated a circular entitled "How Are You Feeling?," containing the following statement:

It acts on the bowels as a laxative and helps clear out old foul substances that often cause headaches, dizzy spells, skin eruptions, boils and pimples. Brings forth gas, relieves gas pains, bloating and palpitation. It is a mild diuretic to the kidneys, relieving backaches, pains in muscles, and stiffness. Vendol is a splendid appetizer which in turn creates strength and energy.

The publication of this circular was discontinued December 21, 1938.

In addition to the foregoing advertisements the respondent disseminates false advertisements in the same manner as set out above by means of testimonial letters which the respondent places in pamphlets, booklets and advertising copy and in continuities broad-

cast from radio stations. Among and typical of the false statements and representations disseminated as aforesaid by respondent by use of testimonial letters in its advertising are the following:

I was troubled continually with an upset stomach and was always taking some kind of a laxative. This made me feel dizzy, caused many sleepless nights and made me terribly run down. Vendol proved to be an excellent laxative and soon relieved a great deal of my suffering. I now have a good appetite and sleep well since my nerves stopped bothering me.

I have been suffering a long time from terrible aching pains in my arms, back and legs. My shoulders ached frequently. So much so that I lost valuable sleep and was in misery most of the time. A friend recommended Vendol saying that it had done a great deal for him. Vendol and the little Vendol laxative tablets gave such fine relief from upset stomach and proved to be such a splendid diuretic that I am no longer troubled by aches and pains, headaches or nervousness due to irregularity.

For several years my health had been declining and although I tried many different ways to restore it, nothing seemed to do much good. I heard about Vendol and decided to try it. To my surprise I began to feel better from my very first bottle. Vendol and the little Vendol laxative tablets gave truly remarkable relief. The terrible dizzy spells, headaches and other spells I used to have have now disappeared. My nerves are now calm and sleep comes easily.

My back seemed to ache just about all the time and my right arm was practically useless. Also I had to be very careful about what I ate. Vendol and the little Vendol tablets worked easily and pleasantly as a laxative and I was soon relieved of my distress after taking my first bottle of Vendol.

I never had a remedy give such marvelous relief from the distress of after eating and acid stomach. The first few treatments relieved the cramps and bloated feeling and now I can eat anything I desire without fear of the after effects.

I was so dizzy at times that I'd have to hold on to something to steady myself, little spots danced before my eyes, my skin was sallow and full of little pimples. After Vendol relieved my constipation these troubles all disappeared and I feel great now.

After Vendol relieved my constipation all signs of indigestion, gas, upset stomach, headache, biliousness, in fact all my old troubles passed away and I actually feel better today than I have in years.

PAR. 3. The statements set forth in paragraph 2 hereof and others similar thereto not specifically set out herein, are intended to be descriptive of the remedial, curative, or therapeutic properties of respondent's preparation, and by the use of such statements the respondent represents, directly and indirectly, that respondent's preparation "Vendol": (*a*) is a remedy or cure and an effective treatment for constipation, stomach disorders, liver ailments, muscle, joint and body pains, rheumatism, headaches, dizziness, excess acidity, gas, cramps, indigestion, skin disorders, bad breath, palpitation, bloating, stiffness, and declining health; (*b*) in all cases brings relief to

sufferers from constipation, stomach and liver disorders, pains in muscles and back, headache and rheumatism; (*c*) assures good digestion and enables one to eat all kinds of food without fear of acid indigestion; (*d*) prevents acidity, gas, cramps, burning stomach and constipation; (*e*) is a tonic and benefits and tones the system; (*f*) soothes the nerves and relieves and ends sleeplessness and insomnia; (*g*) strengthens the stomach and digestive organs; (*h*) is an appetizer and stimulates the appetite and increases strength and energy and promotes new vigor and makes one seem years younger; (*i*) will overcome or cure "irregularity" of the bowels; and

That constipation or "irregularity" of the bowels is the cause of indigestion, skin disorders, gas, dizzy spells, acidity, headaches, heartburn, sleeplessness, dyspepsia, heart fluttering, liver ailments and other similar conditions, and

That the need for a diuretic is responsible for back, joint, muscular and other pains and stiffness, and

That a majority of common aches, pains, and disorders are due entirely to constipation.

All of the advertising representations set out in paragraph 2 hereof which were broadcast from radio stations are excerpts from more detailed statements furnished by the respondent to the various broadcasting stations and are misleading with reference to the remedial and therapeutic properties of respondent's medicinal preparation.

PAR. 4. In truth and in fact Vendol is not a remedy or cure for the diseases or conditions of which stomach disorders, liver ailments, muscular pain and body pain, rheumatism, headaches, dizziness, excess acidity, gas, cramps, indigestion, skin disorders, bad breath, palpitation, bloating, stiffness or declining health are symptoms and it has no therapeutic value in the treatment of such symptoms or conditions in excess of that afforded by a laxative with mild diuretic and slightly antiacid effects. Vendol does not in all cases bring relief to sufferers from constipation, stomach and liver disorders, muscular and back pains, headaches and rheumatism although it may give temporary relief from constipation and may give temporary relief from stomach and liver disorders, muscular and back pains and headaches when such conditions are definitely due to constipation or the need of a diuretic. Its use does not assure or insure good digestion or enable one to eat all kinds of food and be free from acid indigestion. It does not prevent acidity, gas, cramps or burning stomach. It is not a tonic and does not beneficially affect the nerves or relieve sleeplessness or insomnia and does not strengthen the stomach or digestive organs and does

not promote vigor or make one appear younger. It is not an appetizer and has little value in stimulating the appetite.

Constipation is not generally or usually the cause of indigestion, skin disorders, gas, headaches, "heartburn," sleeplessness, dyspepsia, heart fluttering, common aches and pains or other similar conditions.

Vendol has no therapeutic value in the treatment of backaches, joint, muscular, and other pains or stiffness in excess of that afforded by a mild diuretic when such conditions are symptoms of those kidney disorders which respond to a mild diuretic, and such symptoms are often indicative of other disorders which will not respond to a mild diuretic.

PAR. 5. The respondent in various advertisements lists numerous symptoms with the representation that the preparation Vendol will relieve such symptoms and the disorders and ailments of which they are indicative. Typical of such advertisements disseminated by the respondent is the following:

> Relieves many troubles such as dizziness, headaches, spots before the eyes, coated tongue, foul breath, cramps, poor digestion, heartburn, dyspepsia, shortness of breath, heart flutterings, heavy feeling in the pit of the stomach, lump in the throat, nervousness, poor sleep—when due to constipation.

The use of advertisements of this type has the tendency and capacity to cause the erroneous belief that respondent's preparation will relieve the symptoms of dizziness, headaches, spots before the eyes, coated tongue, foul breath, cramps, poor digestion, heartburn, dyspepsia, shortness of breath, heart flutterings, heavy feeling in the pit of the stomach, lump in the throat and nervousness, irrespective of whether such symptoms are due to constipation. This is particularly true since the qualifying statement "when due to constipation" appears in the advertisement in such a manner as to be readily identified with only one of the numerous symptoms therein listed. Respondent's preparation will have no therapeutic effect with respect to relieving any of these symptoms or the disorders with which they are connected except when they are due to constipation, which is often not the case.

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 and without presentation of argument or filing of briefs, 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, David H. Fulton, an individual, trading as Vendol Co., or trading under any other name or names, his representatives, agents, servants, and employees, acting directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his medicinal preparation "Vendol," or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

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 by the Federal Trade Commission Act, which advertisement:

(*a*) Represents that said preparation is a cure or remedy for constipation or constitutes a competent or effective treatment therefor, in excess of furnishing temporary relief for such condition.

(*b*) Represents that said preparation is a cure or remedy for stomach disorders, liver ailments, skin disorders or dyspepsia; or that said preparation constitutes a competent or effective treatment therefor, in excess of furnishing temporary relief when such conditions are due to constipation or the need of a mild diuretic.

(*c*) Represents that said preparation is a cure or remedy for muscular and body pains, rheumatism, headaches, dizziness, excess acidity, gas, cramps, indigestion, bad breath, palpitation, bloating, stiffness or heart flutterings, or that said preparation is a cure or remedy for any disease or malady of which such ailments may be symptoms, or that said preparation has any therapeutic value in the treatment of such symptoms in excess of the temporary relief from such symptoms afforded by a laxative with mild diuretic and slightly anti-acids effects.

(*d*) Lists symptoms of diseases or conditions which are not generally or usually caused by, or directly associated with, constipation in such a manner as to represent either directly or inferentially that such symptoms are typical symptoms of constipation or that the presence of such symptoms indicates that the sufferer therefrom has constipation or is in need of a laxative.

(*e*) Lists symptoms of diseases or disorders which may be caused by or directly associated with constipation without an additional statement that such preparation will be of value in the treatment of such symptoms only when they are due to constipation and only to the extent of the temporary relief afforded by a laxative, mild diuretic and antiacid.

(*f*) Represents that the use of said preparation will insure good digestion, relieve insomnia, strengthen the stomach or digestive organs, promote vigor, stimulate the appetite, or make the user appear younger.

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.

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 AMERICAN CRAYON COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTIONS (a) AND (d) OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY SECTION 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4142. Complaint, May 24, 1940—Decision, Dec. 31, 1940

Where a corporation engaged in manufacturing crayons, chalk, paint sets, educational supplies, and allied products, and in offering for sale, selling, and distributing said products to purchasers in various States, in substantial competition with other concerns similarly engaged—

In selling its products of like grade and quality to all customers at one list price, from which those who purchased solely in case lots were allowed 50 percent trade discount—

(*a*) Granted and allowed to certain "multiple discount customers" who were those "receiving discounts over and beyond the regular quantity or schedule discounts from one or more manufacturers in a similar field" and who were in active competition with other customers receiving only the aforesaid regular trade discount of 50 percent, additional discounts including (1) discounts ranging from 5 percent to 10 percent over and above aforesaid regular trade discount; and (2) varying discounts ranging from 15 percent to 10 percent plus 10 percent on certain sizes of "Prang" tempera only, over and above said regular trade discount;

With result that effect of such discriminations in price might be substantially to lessen competition in the lines of commerce concerned, to injure competition with it in the sale of its products, and substantially to injure competition in the resale of such products with its favored customers who were granted and allowed aforesaid discounts over and above the regular 50 percent trade discount:

Held, That under the facts and circumstances above set forth, said corporation discriminated in price in the sale of its products between different purchasers in violation of subsection (*a*) of section 2 of the Clayton Act as amended; and

Where said corporation, engaged as aforesaid—

(*b*) Granted to certain "special or promotional distributors," over and above aforesaid regular trade discount of 50 percent and as compensation for carrying warehouse stocks and furnishing promotional and selling services and facilities, (1) in some cases additional percentage discounts of 10 percent; and (2) in another group of cases, additional discounts of 5 percent, without making such compensation available on proportionally equal terms to their competitors, whose requests to be allowed such compensation for furnishing the same services and facilities as those supplied by aforesaid favored customers it refused:

Held, That said corporation granted and allowed compensation to certain of its customers for services and facilities 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.

Mr. John T. Haslett for the Commission.

Flynn, Frohman, Buckingham, Py & Kruse, of Sandusky, Ohio, 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 subsections (*a*) and (*d*) 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:

I

Charging violation of subsection (*a*) of section 2 of the Clayton Act as amended, the Commission alleges:

PARAGRAPH 1. Respondent, The American Crayon Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at Sandusky, Ohio. Said respondent operates and maintains a plant at Sandusky, Ohio, and a warehouse at Jersey City, N. J.

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 crayons, chalk, paint sets, educational supplies, and 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 such sales, causes said products to be shipped and transported from its places of business to the purchasers thereof who are located in the various States of the United States other than the States in which respondent's places of business are 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 warehouse and the purchasers of said products. 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 selling and distributing crayons, chalk, paint sets, educational supplies, and allied products in commerce.

PAR. 4. In the course and conduct of its business as aforesaid, respondent, since June 19, 1936, has been and is now discriminating in price between different purchasers by selling its products to some of its customers at lower prices than it sells products of like grade and quality to other of its customers competitively engaged one with the other in the resale of said products within the United States. Respondent offers and sells its said products at one list price from which customers who purchase in case lots either for use or for resale are allowed by the respondent a 50 percent trade discount. To purchasers among this class of customers, whom the respondent designates as "Multiple Discount Customers," the respondent grants and allows additional discounts. To some of such "Multiple Discount Customers," respondent grants and allows discounts over and above the regular trade discount of 50 percent off the list price, ranging from 5 to 15 percent. To others of such "Multiple Discount Customers" the respondent grants and allows a discount of 10 plus 10 percent over and above the regular trade discount of 50 percent off the list price.

The "Multiple Discount Customers" of respondent who are granted and allowed the discounts over and above the regular trade discount of 50 percent off the list price, as aforesaid, are in active competition with other customers of respondent who purchase respondent's products in case lots and who do not receive any discounts over and above the regular trade discount of 50 percent off the list price.

PAR. 5. The effect of the discriminations in price set forth in paragraph 4 hereof has been and may be substantially to lessen competition in the lines of commerce in which respondent and its said customers are engaged and to injure, destroy, and prevent competition with the respondent in the sale and distribution of crayons, chalk, paint sets, educational supplies, and allied products, and has been and may be substantially to injure, destroy and prevent competition in the resale of such products with the favored customers of respondent who are granted and allow the discounts as aforesaid, over and above the regular trade discount of 50 percent off the list price.

PAR. 6. The foregoing acts and practices of said respondent are in violation of subsection (*a*) of section 2 of the Clayton Act as amended.

II

Charging violation of subsection (*d*) of section 2 of the Clayton Act as amended, the Commission charges:

PARAGRAPH 1. Paragraphs 1 to 3, inclusive, of count I hereof, are hereby repeated and made a part of this charge as fully and with the same effect as though herein again set forth at length.

PAR. 2. In the course and conduct of its business as aforesaid, respondent, since June 19, 1936, has been and is granting compensation in the form of percentage discounts or allowances to some of its customers who are selected by the respondent and who are designated as "Special or Promotional Distributors." Such percentage discounts or allowances have been and are granted to favored customers in consideration for merchandising and selling services furnished in connection with the sale of respondent's products. The percentage discounts are deducted from the invoice price and are over and above the regular trade discount of 50 percent off the list price. The respondent grants and allows such percentage discounts to its favored customers without making such discounts or allowances available on proportionally equal terms to other customers competing with such favored customers in the sale and distribution of respondent's said products.

Such other customers are able and willing to furnish the same services and facilities to the respondent as those furnished by its customers designated by the respondent as "Special or Promotional Distributors." To these customers who are able and willing to furnish the same services or facilities for the respondent as those furnished by customers designated as "Special or Promotional Distributors," the respondent has not made available the percentage discounts or allowances which are granted by the respondent to its "Special or Promotional Distributors." Respondent's customers who are able and willing to furnish the same services and facilities as furnished by respondent's "Special or Promotional Distributors" have requested the respondent to allow such compensation to them and, although often requested so to do by such customers, the respondent has refused and continues to refuse to grant or allow such compensation to them.

PAR. 3. The foregoing acts and practices of said respondent are violations of subsection (*d*) 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 section 1 of an 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 May 24, 1940, issued and

served its complaint in this proceeding upon the party respondent named in the caption hereof, charging respondent with violating the provisions of subsections (*a*) and (*d*) of section 2 of said act as amended.

After the issuance of said complaint a stipulation was entered into between W. T. Kelley, chief counsel for the Commission, and the respondent containing a statement of certain facts taken as the facts for the purpose of this proceeding and authorizing the Commission to proceed upon such statements and to make its report stating its findings as to the facts and its conclusions based thereon and enter its order disposing of the proceeding without the presentation of argument and the filing of briefs.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the stipulation of facts, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that subsections (*a*) and (*d*) of section 2 of the Clayton Act as amended by the Robinson-Patman Act have been violated by the respondent, now makes this its findings as to the facts and its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The American Crayon Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at Sandusky, Ohio. Respondent operates and maintains a plant at Sandusky, Ohio, and a warehouse at Jersey City, N. J.

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 crayons, chalk, paint sets, educational supplies and 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 such sales causes said products to be shipped and transported from its places of business to the purchasers thereof who are located in various States of the United States other than the states in which respondent's places of business are located. There is and has been at all times mentioned herein a continuous course of trade and commerce in said products across State lines between respondent's factory and warehouse and the purchasers of said products. Said products are sold and transported 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 times 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 crayons, chalk, paint sets, educational supplies, and allied products in commerce.

PAR. 4. Respondent has sold and is selling its products of like grade and quality to all customers at one list price from which customers who purchase solely in case lots are allowed by the respondent a 50 percent trade discount. Among the customers of the respondent who purchase solely in case lots and who are allowed the 50 percent trade discount is a group which may be designated as "multiple discount customers" who are customers "receiving discounts over and beyond regular quantity or scheduled discounts from one or more manufacturers in a similar field." To some such "multiple discount customers" the respondent has granted and allowed and does grant and allow discounts over and above the regular trade discount of 50 percent off the list price ranging from 5 percent to 10 percent.

To some other of such "multiple discount customers" the respondent has granted and allowed, and does grant and allow, varying discounts ranging from 15 per cent to 10 percent plus 10 percent on certain sizes of "Prang" tempera only, over and above the regular trade discount of 50 percent off the list price.

All customers of the respondent designated as "multiple discount customers" receive varying discounts which are deducted from the invoice price and follow the regular trade discount generally allowed to all customers by the respondent who purchase in case lots.

The "multiple discount customers" of respondent who are granted and allowed the additional discounts above referred to are in active competition with other customers of the respondent who purchase products of like grade and quality solely in case lots and who do not receive any discounts other than the regular trade discount of 50 percent off the list price generally allowed to all customers of the respondent purchasing in case lots.

PAR. 5. The effect of the discriminations in price as hereinabove set forth may be substantially to lessen competition in the lines of commerce in which respondent and its said competitors are engaged and to injure competition with the respondent in the sale and distribution of crayons, chalk, paint sets, educational supplies, and allied products and may be substantially to injure competition in the resale of such products with the favored customers of respondent who are granted and allowed the discounts as aforesaid over and above the regular trade discount of 50 percent off the list price.

PAR. 6. In the course and conduct of its business as aforesaid, respondent since June 19, 1936, has been and is granting compensation in the form of percentage discounts or allowances to some of its customers who are designated by the respondent as "special or promotional distributors" and who are customers "rendering varied services and facilities over and beyond that rendered by a regular jobber or distributor of merchandise." Such percentage discounts or allowances have been and are granted to these customers as compensation in consideration of merchandising, promotional and other selling services furnished in connection with the sale of respondent's products. The percentage discounts are deducted from the invoice price and are over and above the regular trade discount of 50 percent off the list price generally allowed by the respondent to all customers who purchase solely in case lots. The respondent in some instances grants and allows such compensation to its "special or promotional distributors" without making such compensation available on proportionally equal terms to other customers who are in competition with such "special or promotional distributors" in the sale and distribution of respondent's products of like grade and quality.

To some customers classified as "special or promotional distributors" the respondent grants and allows a 10 percent discount as compensation for carrying warehouse stocks and furnishing promotional and selling services and facilities.

To another group of customers in the classification of "special or promotional distributors" the respondent grants and allows a 5 percent discount as compensation for carrying warehouse stocks and furnishing promotional and selling services and facilities less extensive than those furnished by the group receiving the 10 percent compensation.

Among the customers of the respondent are some who are able and willing to furnish the same services and facilities to the respondent as those furnished by its customers designated as "special or promotional distributors." To these customers the respondent has not made available the percentage discounts or allowances which are granted by the respondent as compensation to its "special or promotional distributors." Among these customers who are able and willing to furnish the same services and facilities as furnished by the respondent's "special or promotional distributors" are some who have requested the respondent to allow such compensation to them and although so requested by such customers the respondent has refused, and continues to refuse, to grant or allow such compensation on proportionally equal terms.

CONCLUSIONS

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that the respondent, The American Crayon Co., has discriminated in price in the sale of its products between different purchasers in violation of subsection (*a*) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

The Commission further concludes that the respondent, The American Crayon Co., has granted and allowed compensation to certain of its customers for services and facilities 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 and the stipulation as to the facts entered into between respondent herein and W. 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 conclusions based thereon, and an order disposing of the proceedings, and the Commission having made its findings as to the facts and conclusions that said respondent has violated the provisions of subsection (*a*) and 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 respondent, The American Crayon Co., a corporation, its officers, directors, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of crayons, chalk, paint sets, educational supplies, and allied products in interstate commerce for use or resale, do forthwith cease and desist:

1. From selling such commodities of like grade and quality to competing purchasers at uniform prices and granting varying discounts therefrom in the manner and under the circumstances found in paragraph 4 of the aforesaid findings as to the facts and conclusions.

2. From continuing or resuming the discriminations in price referred to and described in paragraph 4 of the Commission's findings as to the facts herein.

3. From otherwise discriminating in price between purchasers of crayons, chalk, paint sets, educational supplies, and allied products of like grade and quality, in a manner and degree substantially similar to the manner and degree of the discriminations referred to in paragraph 4 of the Commission's findings as to the facts herein, and in any other manner resulting in price discriminations substantially equal in amount to such discriminations, except as permitted by section 2 of the Clayton Act as amended.

4. From granting or allowing compensation to any 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, 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 customers.

5. From granting or allowing compensation of an amount equal to 5 percent of the respondent's net billing prices of products sold by such customer, 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, The American Crayon Co., a corporation, its officers, directors, representatives, agents, and employees, in connection with the sale and distribution of crayons, chalk, paint sets, educational supplies, 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

BINNEY AND SMITH COMPANY

COMPLAINT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTIONS (a) AND (d) OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY SECTION 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4143. Complaint, May 24, 1940—Decision, Dec. 31, 1940

Where a corporation engaged in manufacturing crayons, chalk, paint sets, educational supplies, and allied products, and in offering for sale, selling, and distributing said products to purchasers in various States, in substantial competition with other concerns similarly engaged—

In selling its products of like grade and quality to all customers at one list price from which those who purchased solely in case lots were allowed a 50 percent trade discount—

(*a*) Granted and allowed to a certain group of "competitive distributors" who were in active competition with its other customers receiving only aforesaid regular trade discount of 50 percent additional discounts including, (1) prior to complaint, discounts of 5 percent over and above the regular trade discount; and (2) discounts of 10 percent above the regular trade discount, thereafter, accorded to all such "competitive distributors" following the regular trade discount allowed to all customers purchasing in case lots;

With result that the effect of said discriminations in price might be substantially to lessen competition and to injure, destroy and prevent competition between it and its competitors in the products in question; and also substantially to lessen competition and to injure, destroy and prevent it in the use and resale of such products between some of its customers receiving the lower prices and some of the customers competitively engaged therewith who did not receive such lowered prices; and to tend to create a monopoly in it in said line of commerce;

Held, That under the facts and circumstances above set forth said corporation discriminated in price in the sale of its products between different purchasers in violation of subsection (*a*) of section 2 of the Clayton Act as amended; and

Where said corporation, engaged as aforesaid—

(*b*) Granted to certain "special or promotional representatives," over and above aforesaid regular trade discount of 50 percent, as compensation for carrying warehouse stocks and furnishing selling services and facilities (1) in some cases, additional percentage discounts of 10 percent; and (2) in another group of cases, additional discounts of 5 percent, without making such compensation available on proportionally equal terms to their competitors, whose request to be allowed such compensation for furnishing the same services and facilities as those supplied by aforesaid favored customers it refused:

Held, That said corporation granted and allowed compensation to certain of its customers for services and facilities 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.

Mr. John T. Haslett for the Commission.
Clark, Carr & Ellis, of New York City, 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 subsections (*a*) and (*d*) 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:

I

Charging violation of subsection (*a*) of section 2 of the Clayton Act as amended, the Commission alleges:

PARAGRAPH 1. Respondent, Binney & Smith Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 41 East Forty-Second Street, New York, N. Y. The respondent operates and maintains a manufacturing plant at Keplers, Pa.

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 crayons, chalk, paint sets, educational supplies, and 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 such sales, causes said products to be shipped and transported from its places of business to the purchasers thereof who are located in the various States of the United States other than the States in which respondent's places of business are located. There is and has been at all times mentioned a continuous course of trade and commerce in said products across State lines between respondent's factory and the purchasers of said products. 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 the time herein mentioned has been in substantial competition with other corporations and with individuals, partnerships and firms engaged in the business of selling and distributing crayons, chalk, paint sets, educational supplies, and allied products in commerce.

PAR. 4. IN the course and conduct of its business as aforesaid, respondent, since June 19, 1936, has been and is now discriminating in price between different purchasers by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers competitively engaged one with the other in the resale of said products within the United States. Respondent offers and sells its said products at one price list from which customers who purchase in case lots either for use or for resale are allowed by the respondent a 50 percent trade discount. To purchasers among this class of customers, whom respondent designates as "Competitive Distributors," the respondent grants and allows additional discounts. To some of such "Competitive Distributors" respondent grants and allows a discount of 5 percent over and above the regular trade discount of 50 percent off the list price. To others of such "Competitive Distributors" the respondent grants and allows a discount of 10 percent over and above the regular trade discount of 50 percent off the list price.

The "Competitive Distributors" of the respondent who are granted and allowed the discounts over and above the regular trade discount of 50 percent off the list price, as aforesaid, are in active competition with other customers of respondent who purchase respondent's products in case lots and who do not receive any discounts over and above the regular trade discount of 50 percent off the list price.

PAR. 5. The effect of the discriminations in price set forth in paragraph 4 hereof has been and may be substantially to lessen competition in the lines of commerce in which respondent and its said customers are engaged and to injure, destroy and prevent competition with respondent in the sale and distribution of crayons, chalk, paint sets, educational supplies, and allied products, and has been and may be substantially to injure, destroy and prevent competition in the resale of such products with the favored customers of respondent who are granted and allowed the discounts as aforesaid, over and above the regular trade discount of 50 percent off the list price.

PAR. 6. The foregoing acts and practices of said respondent are in violation of subsection (*a*) of section 2 of the Clayton Act as amended.

II

Charging violation of subsection (*d*) of section 2 of the Clayton Act as amended, the Commission charges:

PARAGRAPH 1. Paragraphs 1 to 3, inclusive, of count I hereof, are hereby repeated and made a part of this charge as fully and with the same effect as though herein again set forth at length.

PAR. 2. In the course and conduct of its business as aforesaid, respondent, since June 19, 1936, has been and is granting compensation in the form of percentage discounts or allowances to some of its customers who are selected by the respondent and who are designated as "Special or Promotional Representatives." Such percentage discounts or allowances have been and are granted to favored customers in consideration for merchandising and selling services furnished in connection with the sale of respondent's products. The percentage discounts are deducted from the invoice price and are over and above the regular trade discount of 50 percent off the list price. The respondent grants and allows such percentage discounts to its favored customers without making such discounts or allowances available on proportionally equal terms to other customers competing with such favored customers in the sale and distribution of respondent's said products.

Such other customers are able and willing to furnish the same services and facilities to the respondent as those furnished by its customers designated by the respondent as "Special or Promotional Representatives." To these customers who are able and willing to furnish the same services or facilities for the respondent as those furnished by customers designated as "Special or Promotional Representatives," the respondent has not made available the percentage discounts or allowances which are granted by the respondent to its "Special or Promotional Representatives." Respondent's customers who are able and willing to furnish the same services and facilities as furnished by respondent's "Special or Promotional Representatives" have requested the respondent to allow such compensation to them and, although often requested so to do by such customers, the respondent has refused and continues to refuse to grant or allow such compensation to them.

PAR. 3. The foregoing acts and practices of said respondent are violations of subsection (*d*) 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 section 1 of an 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 May 24, 1940, issued and served its complaint in this proceeding upon the respondent named in the caption hereof, charging respondent with violating the provisions of subsections (*a*) and (*d*) of section 2 of said act as amended.

After the issuance of said complaint and the filing of respondent's answer, a stipulation was entered into between W. T. Kelley, chief counsel for the Commission, and the respondent containing a statement of certain facts taken as the facts for the purpose of this proceeding and authorizing the Commission to proceed upon such statements and to make its report stating its findings as to the facts and its conclusions based thereon and enter its order disposing of the proceeding without the presentation of argument and the filing of briefs.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the stipulation of facts, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that subsections (*a*) and (*d*) of section 2 of the Clayton Act as amended by the Robinson-Patman Act have been violated by the respondent, now makes this its findings as to the facts and its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Binney and Smith Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 41 East Forty-second Street, New York, N. Y. Respondent operates and maintains a manufacturing plant at Keplers, Pa.

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 crayons, chalk, paint sets, educational supplies, and 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 such sales causes said products to be shipped and transported from its places of business to the purchasers thereof who are located in the various States of the United States other than the States in which respondent's places of business are located. There is, and has been at all times mentioned herein, a continuous course of trade and commerce in said products across State lines between respondent's factory and the purchasers of said products. 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 times 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 crayons, chalk, paint sets, educational supplies, and allied products in commerce.

PAR. 4. Respondent has sold and is selling its products of like grade and quality to all customers at one list price from which customers who purchase solely in case lots are allowed by the respondent a 50 percent trade discount. Among the customers of the respondent who purchase solely in case lots and who are allowed the 50 percent trade discount is a group designated as "competitive distributors." To purchasers among this class of customers designated as "competitive distributors" the respondent has granted and allowed, and does grant and allow, additional discounts. To some of such "competitive distributors" the respondent did grant and allow a discount of 5 percent over and above the regular trade discount of 50 percent off the list price, but since the issuance of the complaint herein the respondent has discontinued the allowance of such 5 percent discount to any customers.

To others of such "competitive distributors" and since the issuance of the complaint herein to all such "competitive distributors," the respondent has granted and allowed and does grant and allow a discount of 10 percent over and above the regular trade discount of 50 percent off the list price.

All customers of the respondent designated as "competitive distributors" receive such 10 percent discount, which is deducted from the invoice price, and follow the regular trade discount generally allowed to all customers by the respondent who purchase in case lots.

The "competitive distributors" of respondent who are granted and allowed the additional discount above referred to are in active competition with other customers of the respondent who purchase products of like grade and quality solely in case lots and who do not receive any discounts other than the regular trade discount of 50 percent off the list price generally allowed customers of the respondent purchasing in case lots.

PAR. 5. The effect of said discriminations in price so made by the respondent as above set forth may be substantially to lessen competition and to injure, destroy, and prevent competition between the respondent and its competitors in the sale and distribution of crayons, chalk, paint sets, educational supplies, and allied products; and also may be substantially to lessen competition and to injure, destroy, and prevent

competition in the use and resale of such products between some of the customers receiving the lower prices and some of the customers competitively engaged with the customers receiving lower prices and who deal in said products and who do not receive such lowered prices. The effect of said discriminations in price also may tend to create a monopoly in respondent in said line of commerce.

PAR. 6. In the course and conduct of its business as aforesaid, respondent since June 19, 1936, has been and is granting compensation in the form of percentage discounts or allowances to some of its customers who are selected by the respondent, and who are designated by the respondent as "special or promotional representatives." Such percentage discounts, or allowances, have been and are granted to these customers as compensation in consideration of merchandising and selling services furnished in connection with the sale of respondent's products. The percentage discounts are deducted from the invoice price and are over and above the regular trade discount of 50 percent off the list price generally allowed by the respondent to all customers who purchase solely in case lots. The respondent grants and allows such compensation to "special or promotional representatives" without making such compensation available on proportionally equal terms to other customers who are in competition with such "special or promotional representatives" in the sale and distribution of respondent's products of like grade and quality.

To some customers classified as "special or promotional representatives" the respondent has granted and allowed, and does grant and allow, a 10 percent discount as compensation for carrying warehouse stocks and furnishing selling services and facilities.

To another group of customers in the classification of "special or promotional representatives" the respondent did grant and allow a 5 percent discount as compensation for carrying warehouse stocks and furnishing selling services and facilities less extensive than the group receiving the 10 percent compensation, but since the issuance of the complaint herein the respondent has discontinued the allowance of a 5 percent discount to any customers, and since the issuance of the complaint herein to all "special or promotional representatives" the respondent has granted and allowed and does grant and allow a 10 percent discount as compensation for carrying warehouse stocks and furnishing selling services and facilities.

Among the customers of the respondent are some who are able and willing to furnish, and in some instances do furnish, the same services and facilities to the respondent as those furnished by its customers designated as "special or promotional representatives." To

these customers the respondent has not made available the discount and allowance which is granted by the respondent as compensation to its "special or promotional representatives." Among these customers who are able and willing to furnish, and in some instances do furnish, the same services and facilities as are furnished by the respondent's "special or promotional representatives" are some who have requested the respondent to allow such compensation to them and, although so requested by such customers, the respondent has refused and continues to refuse to grant or allow compensation to such non-compensated customers on proportionally equal terms.

CONCLUSIONS

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that the respondent, Binney and Smith Co., has discriminated in price in the sale of its products between different purchasers in violation of subsection (*a*) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

The Commission further concludes that the respondent, Binney and Smith Co., has granted and allowed compensation to certain of its customers for services and facilities 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 respondent herein and W. 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 conclusions based thereon, and an order disposing of the proceedings, and the Commission having made its findings as to the facts and conclusions that said respondent has violated the provisions of subsection (a) and 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 respondent, Binney and Smith Co., a corporation, its officers, directors, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of crayons, chalk, paint sets, educational supplies, and allied products in interstate commerce for use or resale, do forthwith cease and desist:

1. From selling such commodities of like grade and quality to competing purchasers at uniform prices and granting varying discounts therefrom in the manner and under the circumstances found in paragraph 4 of the aforesaid findings as to the facts and conclusions.

2. From continuing or resuming the discriminations in price referred to and described in paragraph 4 of the Commission's findings as to the facts herein.

3. From otherwise discriminating in price between purchasers of crayons, chalk, paint sets, educational supplies, and allied products of like grade and quality, in a manner and degree substantially similar to the manner and degree of the discriminations referred to in paragraph 4 of the Commission's findings as to the facts herein, and in any other manner resulting in price discriminations substantially equal in amount to such discriminations, except as permitted by section 2 of the Clayton Act as amended.

4. From granting or allowing compensation to any 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, 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.

5. From granting or allowing compensation of an amount equal to 5 percent of the respondent's net billing prices of products sold by such customer, 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, Binney and Smith Co., a corporation, its officers, directors, representatives, agents, and employees, in connection with the sale and distribution of crayons, chalk, paint sets, educational supplies, 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 offer-

ing for sale of respondent's products, unless such payments are made available on proportionally equal terms to all buyers from the re-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

MENDOZA FUR DYEING WORKS, INC.

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

Docket 3824. Complaint, June 16, 1939—Decision, Jan. 4, 1941

Where a corporation engaged in dyeing furs for fur coats, fur-trimmed coats and fur clothing, and in furnishing to some customers, in course and conduct of its business and to induce customers to forward pelts to it for dyeing and processing, various sketches or designs for use in manufacture of fur garments, and in furnishing also labels to be attached to such garments and designating same under trade name "Mendoza Furs," in harmony with corporate name thereof, and in causing, as thus engaged, its said sketches or designs and labels, together with such processed furs in some instances, to be transported from its place of business in New York to customers in various other States, and in substantial competition, in the course and conduct of its said business, with others likewise engaged in fur dyeing—

(*a*) Represented, in advertisements in various circulars, newspapers and periodicals distributed to customers and prospective customers in the various States, that the sketches supplied by it were adaptations of designs by famous Parisian couturiers, and, in a few instances, that such sketches were designed by such couturiers;

(*b*) Represented, in general advertising to acquaint public and trade with trade name aforesaid, that various garments, thus labeled, were adaptations from designs of various famous Parisian couturiers, and that furs processed by it had won a prize or award in active competition in Paris, France; and

(*c*) Depicted or set forth in its various advertisements, reproductions of the various labels which it furnished and which purported to be those of Parision couturiers, such as Schiaparelli, Vionnet, Heim, Max and Jeanne Lavin and others, and furnished to customers labels in the French language and which it reproduced as above set forth in its advertisements, and which purported to carry signatures and trade marks of certain Parisian couturiers, and which included, as typical, such labels as "d'apres un modele MADELIENE VIONNET (in longhand) pour Mendoza Furs";

Facts being sketches and designs furnished by it were not prepared by any Parisian couturier and labels supplied by it were not those of the particular Parisian couturiers named, it was not authorized by them to use such labels and garments to which they were attached were not made in Paris, France, nor designed by either Schiaparelli, Vionnet, Heim, Max or Jeanne Lavin, or any other person or persons in Paris, and no such persons had any connection with designing or manufacture of products in question, and, while it was, in 1928, awarded Grand Prix, gold medal and diploma by the "Exposition d'Economie Domestique" held at Paris, France, "for its excellent process of the imitation of skins of beaver, fox" and other furs, none of its garments had ever won a prize or award in competition with garments of others in Paris, except as above stated;

With result that, through use of such practice of furnishing unauthorized labels, it placed in hands of uninformed or unscrupulous retailers and manufacturers means and instrumentality whereby they might deceive and mislead members of purchasing public into erroneous belief that fur garments bearing labels as above described had been designed and created and originated in Paris, France, by the famous Parisian couturiers named on labels in question, for which more expensive garments there is a preference over the less costly fur coats and fur clothing designed and made in the United States, as there is on part of substantial portion of purchasing public for such products generally which were designed, created and originated in Paris, France, and with effect, through its use of such misleading statements, representations, and labels, as above set forth, of misleading and deceiving substantial portion of purchasing public into erroneous belief that garments containing labels supplied by it were made in France and designed by French couturiers and had other preeminent qualities, and with consequence, as result of such belief, that a number of consuming public purchased substantial volume of garments containing its labels and trade was thereby diverted unfairly to it from its competitors likewise engaged in fur dyeing business in commerce, and who truthfully advertise 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.

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

Mr. B. G. Wilson for the Commission.

Mr. George J. Beldock, 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 Mendoza Fur Dyeing Works, 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, Mendoza Fur Dyeing Works, 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 135 West Twenty-ninth Street, New York City, in the State of New York.

Par. 2. Respondent, Mendoza Fur Dyeing Works, Inc., for several years last past has been engaged in the business of dressing and dyeing furs chiefly for fur coats and fur clothing. In the course and

conduct of its business and for the purpose of inducing customers to forward pelts to the respondent for dyeing and processing, the respondent furnishes to such customers various sketches or designs for use in the manufacture of fur garments and also labels to be attached to such garments designating them as "Mendoza Furs." Respondent causes said sketches or designs and labels, together with such processed furs, to be transported from its place of business in the State of New York to customers 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 furs processed by it and in sketches or designs and labels to be attached to finished garments in commerce among and between the various States of the United States and in the District of Columbia.

In the course and conduct of its business respondent for more than 1 year last past has been in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with persons, firms, and partnerships likewise engaged in the business of dressing and dyeing furs and of selling and distributing fur garments.

PAR. 3. In the course and conduct of its aforesaid business, the respondent advertises in various circulars, newspapers, and periodicals all of which are distributed to customers and prospective customers located in various States of the United States. In such advertising, the respondent represents that the sketches supplied by it are designed by famous Parisian couturiers; that the labels supplied by it are the labels of famous Parisian couturiers and that the use of such labels is authorized by them. In addition to such advertising, the respondent also does general advertising in the same manner for the purpose of acquainting the public and the trade with the trade name "Mendoza Furs." In this advertising, respondent represents that various garments labeled "Mendoza Furs" are designed by various famous Parisian couturiers, that Mendoza fur garments are manufactured in Paris, France, and have won a prize or award in competitive competition in Paris, France. These various advertisements carry reproductions of the various labels which respondent furnishes and which purport to be labels of Parisian Couturiers such as Schiaparelli, Vionnet, Heim, Max and Jeanne Lavin and others.

In the same manner and for the purpose of misleading members of the purchasing public and also members of the trade, the respondent furnishes to its customers labels in the French language. It reproduces such labels which purport to carry the signature and trade mark of certain Parisian couturiers in its advertising in the manner

aforesaid. Such practices have a tendency to mislead and deceive purchasers into the belief that the garment containing such label has been manufactured in France by or under the direction of the couturier named thereon. A typical example of this form of label is the following:

d'apres un modele

MADELIENE VIONNET
(in longhand)

pour Mendoza Furs

PAR. 4. In truth and in fact the sketches and designs furnished by the respondent are not prepared by any Parisian couturier and the labels supplied by the respondent are not the labels of the particular Parisian couturiers named, nor have such couturiers authorized the respondent to use such labels. The garments to which such labels are attached have not been manufactured in Paris, France, nor have they been designed by either Schiaparelli, Vionnet, Heim, Max or Jeanne Lavin or any other person or persons in Paris, France, and no such persons have any connection with the designing or manufacturing of such products. No garments made of furs dyed or processed by respondent have ever won a prize or award in a competitive competition in Paris, France, and the use of the term "Grand Prix, Paris" appearing in certain of the respondent's advertising is misleading and untrue.

PAR. 5. By the use of the aforesaid practice of furnishing unauthorized labels the respondent places in the hands of uninformed or unscrupulous retail dealers and manufacturers, a means and instrumentality whereby said dealers and manufacturers may deceive and mislead members of the purchasing public into the erroneous belief that fur garments bearing the labels hereinbefore described have been designed, created, and originated in Paris, France, by the famous Parisian couturiers named on such labels.

PAR. 6. There is a preference on the part of a substantial portion of the purchasing public for fur coats and fur clothing designed, created and originated in Paris, France. There is also a preference for garments designed or made by those couturiers named by the respondent in said advertising and on said labels, and such garments command a higher price in the United States than those fur coats and fur clothing designed and made in the United States.

PAR. 7. The use by respondent of the foregoing false statements, representations and labels as hereinabove described has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that gar-

ments containing the labels supplied by the respondent are manufactured in France, designed by French couturiers and have other preeminent qualities. As a result of such erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of garments containing respondent's labels with the effect that trade has been diverted unfairly to the respondent from its competitors likewise engaged in the business of dressing and dyeing furs and of manufacturing and selling fur coats and fur clothing in commerce among and between the various States of the United States who truthfully advertise their respective products. As a consequence thereof, injury has been done and is now being done by the respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 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 18th day of June 1939, issued and served its complaint in this proceeding upon said respondent, Mendoza Fur Dyeing Works, Inc., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 2, 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, Mendoza Fur Dyeing Works, 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 722 East One Hundred and Thirty-third Street, New York City, in the State of New York.

PAR. 2. Respondent, Mendoza Fur Dyeing Works, Inc., for several years last past has been engaged in the business of dyeing furs for fur coats, fur trimmed coats, and fur clothing. In the course and conduct of its business and for the purpose of inducing customers to forward pelts to the respondent for dyeing and processing, the respondent furnishes to some customers various sketches or designs for use in the manufacture of fur garments and also labels to be attached to such garments designating them as "Mendoza Furs." Respondent causes said sketches or designs and labels, together with such processed furs, in some instances, to be transported from its place of business in the State of New York to customers located in various other States of the United States.

In the course and conduct of its business respondent for more than one year last past has been in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with persons, firms, and partnerships likewise engaged in the business of dyeing furs.

PAR. 3. In the course and conduct of its aforesaid business, the respondent advertises in various circulars, newspapers, and periodicals all of which are distributed to customers and prospective customers located in various States of the United States. In such advertising, the respondent represents that the sketches supplied by it are adaptations of designs by famous Parisian couturiers; in a few instances which were immediately discontinued, the respondent represented that the sketches were designed by famous Parisian couturiers; in addition to such advertising, the respondent also does general advertising in the same manner for the purpose of acquainting the public and the trade with the trade name "Mendoza Furs." In this advertising, respondent represents that various garments labeled "Mendoza Furs" are adaptations from designs of various famous Parisian couturiers, and that furs processed by respondent have won a prize or an award in competitive competition in Paris, France. These various advertisements carry reproductions of the various labels which respondent furnishes and which purport to be labels of Parisian couturiers such as Schiaparelli, Vionnet, Heim, Max and Jeanne Lavin, and others.

In the same manner and tending to mislead members of the purchasing public and also members of the trade, the respondent furnishes to its customers labels in the French language. It reproduces such labels which purport to carry the signature and trade mark of certain Parisian couturiers in its advertising in the manner aforesaid. Such practices have a tendency to mislead and deceive purchasers into the belief that the garment containing such label has been manufactured in France by or under the direction of the couturier named thereon. A typical example of this form of label is the following:

d'apres un modele

MADELIENE VIONNET
(in longhand)

pour Mendoza Furs

PAR. 4. In truth and in fact the sketches and designs furnished by the respondent are not prepared by any Parisian couturier and the labels supplied by the respondent are not labels of the particular Parisian couturiers named, nor have any such couturiers authorized the respondent to use such labels. The garments to which such labels are attached have not been manufactured in Paris, France, nor have they been designed by either Schiaparelli, Vionnet, Heim, Max or Jeanne Lavin or any other person or persons in Paris, France, and no such persons have any connection with the designing or manufacturing of such products. No garments of respondent have ever won a prize or award in a competition with garments of others in Paris, France, except as hereinafter stated, and the use of the term "Grand Prix, Paris" appearing in its present form in certain of the respondent's advertising may tend to mislead.

Respondent was in 1928 awarded Grand Prix, a gold medal and diploma by the "Exposition d'Economie Domestique," held at Paris, France, "for its excellent process of the imitation of skins of beaver, fox" and other furs.

PAR. 5. By the use of the aforesaid practice of furnishing unauthorized labels the respondent places in the hands of uninformed or unscrupulous retail dealers and manufacturers, a means and instrumentality whereby said dealers and manufacturers may deceive and mislead members of the purchasing public into the erroneous belief that fur garments bearing the labels hereinbefore described have been designed, created or originated in Paris, France, by the famous Parisian couturiers named on such labels.

PAR. 6. There is a preference on the part of a substantial portion of the purchasing public for fur coats and fur clothing designed,

created and originated in Paris, France. There is also a preference for garments designed or made by those couturiers named by the respondent in said advertising and on said labels, and such garments command a higher price in the United States than fur coats and fur clothing designed and made in the United States.

PAR. 7. The use by the respondent of the foregoing misleading statements, representations and labels as hereinabove described 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 garments containing the labels supplied by the respondent are manufactured in France, designed by French couturiers and have other preeminent qualities. As a result of such erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of garments containing respondent's labels with the effect that trade has been diverted unfairly to the respondent from its competitors likewise engaged in the business of dyeing furs in commerce among and between the various States of the United States who truthfully advertise their respective products. As a consequence thereof, injury has been done and is now being done by the respondent to competition in commerce among and between the various States in 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, 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, Mendoza Fur Dyeing Works, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the business of processing furs, designing garments, or the sale or distribution of sketches or designs of fur garments or of labels for use in garments made of fur, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from.

1. Representing, through the use of their names on labels, or in any other manner, that garments made of furs processed by the respondent are made or designed by Schiaparelli, Vionnet, Heim, Max or Jeanne Lavin, or any other couturier, when such is not the fact.

2. Using the names Schiaparelli, Vionnet, Heim, Max or Jeanne Lavin, or the name of any other well-known designer of women's clothing, on labels, or in any other manner, to designate, describe or refer to garments not in fact designed by the person or persons whose names are used.

3. Representing that sketches or designs furnished by the respondent to its customers are sketches or designs prepared by Parisian couturiers, and that the labels supplied with such sketches or designs are the labels supplied by such couturiers for use in garments made from such sketches or designs, and that respondent is authorized to use their names in connection with the manufacture and sale of fur garments.

4. Using the term "Grand Prix Paris" or other words of similar import or meaning to designate, describe or refer to an award or prize received by respondent from "Exposition d'Economie Domestique" in 1928, Paris, France, unless accompanied by a statement, equally conspicuous, showing the nature of said award or prize and the date thereof or representing that garments made from furs dyed or processed by the respondent have received a prize or award in competition with other garments in Paris, France, or at any other place, unless such is a fact, and any reference to such prize or award is accompanied by a statement, equally conspicuous, showing the nature of said prize or award and the date thereof.

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

IN THE MATTER OF

PRONTO FILE CORPORATION

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

Docket 3717. Complaint, Feb. 18, 1939—Decision, Jan. 8, 1941

Where a corporation engaged in manufacture of steel card cabinets and in interstate sale and distribution thereof, in competition with others engaged in sale and distribution in commerce of such products—

Stated in and on folders, cards, and circulars which it distributed and caused to be distributed to its dealer-purchasers and prospective purchasers in various States and in the District of Columbia, and in which its products were pictorially and descriptively represented, that same were being offered at a 50 percent reduction in price, and set forth, in juxtaposition to such pictorial representations and descriptions, price in black numerals which was struck through with red lines and for which, in each case, was substituted, in red numerals, price of half as much, and furnished to dealer-customers, for a consideration, and for distribution to consuming public, such cards, and represented, as aforesaid, as generally understood by dealers and consuming public, that price in black, canceled as above set forth, was regular and customary selling price for product to which it applied, and substituted price, in red, a reduced one, facts being prices set forth in red type, as above set forth, constituted usual and customary prices quoted and charged consuming public by it, and black type prices, canceled as aforesaid, were not its regular and customary prices;

With effect of deceiving and misleading substantial portion of purchasing public into erroneous belief that its products were being offered at a reduced price equal to 50 percent of their retail value and usual and customary retail selling price, and with result, as consequence of such misrepresentation of customary selling price of its products and offer thereof at pretended reduced price, that trade was diverted unfairly to it from many competitors who do not misrepresent usual and customary selling price of their products and do not offer same at pretended reduced prices; 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. John W. Addison*, trial examiner.

Mr. Jesse D. Kash for the Commission.

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

PARAGRAPH 1. Pronto File 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 349 Broadway in the city of New York, State of New York.

PAR. 2. The respondent is now, and has been for more than 1 year last past, engaged in the manufacture, sale, and distribution of steel filing cabinets. Respondent sells said products to dealers and members of the purchasing public situated in various States of the United States, and causes said products when sold by it to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York, and in the District of Columbia. Respondent maintains, and at all times herein has maintained, a course of trade in commerce in said product among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms, and individuals selling and distributing steel filing cabinets in said commerce.

PAR. 4. In the course and conduct of its business as described in paragraph 2 hereof, the respondent, in soliciting the sale of and selling its products as aforesaid, has published and caused to be published, and has distributed and caused to be distributed to its dealer purchasers and prospective purchasers located in various States of the United States and in the District of Columbia, folders, cards, and circulars in which its products are pictorially and descriptively represented. It is also stated in and on said folders, cards, and circulars that such products are being offered at a 50 percent reduction in price. In juxtaposition to the pictorial representations and descriptions of each product offered, a price is set forth in black numerals, which are struck through with red lines, and a price of half as much is substituted in red numerals in each case. Such cards are furnished by respondent to its dealer customers for a consideration for distribution to the consuming public.

PAR. 5. Such method of stating the selling price is generally understood by dealers and the consuming public to be a representation that the price in black type and canceled by the red line is the retail value and the regular and customary selling price of the product to which it applies, and the substituted price in red type is a reduced price.

PAR 6. The aforesaid representations made by the respondent in the manner above described are false and misleading. In truth and in fact the prices set forth in red type as reduced prices are not the result of a reduction of the ordinary and customary retail price, but are the usual and customary prices quoted and charged the consuming public, and the prices in black type and canceled by the red lines are not and were not respondent's regular and customary prices.

PAR. 7. The use by respondent of the above described false and misleading representations has had, and has, the capacity and tendency to, and does, deceive and mislead a substantial portion of the purchasing public into the erroneous belief that respondent's products are being offered at a reduced price equal to 50 percent of their retail value and of the usual and customary retail selling price.

PAR. 8. Among the competitors of respondent doing business in commerce as aforesaid, there are many who do not misrepresent the usual and customary selling prices of their products competitive with the products of respondent, and do not offer products at pretended reduced prices. As a result of respondent's misrepresentations of the customary selling price of these products and its offer of them at pretended reduced prices, trade has been diverted unfairly to respondent from its said competitors in such commerce, and thereby injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 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 February 18, 1939, issued, and on February 20, 1939, served, its complaint in this proceeding upon respondent Pronto File Corporation, a corporation, charging its with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of the

said act. The respondent, on April 3, 1939, filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts agreed to by the respondent and its counsel, Herman L. Weisman, Esq., and Jesse D. Kash, trial attorney for the Commission, and read into the record at a hearing held in New York City on May 16, 1940, 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 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. Thereafter, this proceeding regularly came on for final hearing by the Commission on said complaint, answer and stipulation, said stipulation having been approved, and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Pronto File 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 349 Broadway in the city of New York, State of New York.

PAR. 2. The respondent is now, and has been for more than 1 year last past, engaged in the manufacture, sale, and distribution of steel card cabinets. Respondent sells said products to dealers and members of the purchasing public situated in various States of the United States and causes said products, when sold by it, to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said products among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms and individuals selling and distributing steel card cabinets in said commerce.

PAR. 4. In the course and conduct of its business as described in paragraph 2 hereof, the respondent, in soliciting the sale of and selling its products as aforesaid, has published and caused to be published, and has distributed and caused to be distributed to its dealer purchasers and prospective purchasers located in various States of the United States and in the District of Columbia, folders, cards, and circulars in which its products are pictorially and descriptively represented. It is also stated in and on said folders, cards, and circulars that such products are being offered at a 50 percent reduction in price. In juxtaposition to the pictorial representations and descriptions of each product offered, a price is set forth in black numerals, which are struck through with red lines, and a price of half as much is substituted in red numerals in each case. Such cards are furnished by respondent to its dealer customers for a consideration for distribution to the consuming public.

PAR. 5. Such method of stating the selling price is generally understood by dealers and the consuming public to be a representation that the price in black type and cancelled by the red line is the regular and customary selling price of the product to which it applies, and the substituted price in red type is a reduced price.

PAR. 6. The aforesaid representations made by the respondent in the manner above described are false and misleading. In truth and in fact the prices set forth in red type as reduced prices are not the result of a reduction of the ordinary and customary retail price, but are the usual and customary prices quoted and charged the consuming public, and the prices in black type and cancelled by the red lines are not and were not respondent's regular and customary prices.

PAR. 7. The use by respondent of the above described false and misleading representations has had and has the capacity to and does deceive and mislead a substantial portion of the purchasing public into the erroneous belief that respondent's products are being offered at a reduced price equal to 50 percent of their retail value and the usual and customary retail selling price.

PAR. 8. Among competitors of respondent doing business in commerce as aforesaid there are many who do not misrepresent the usual and customary selling price of their products competitive with products of the respondent and do not offer products at pretended reduced prices. As a result of respondent's misrepresentation of the customary selling price of these products and its offer of them at pretended reduced prices, trade has been diverted unfairly to respondent from its said competitors in commerce and thereby 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 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, answer of respondent and a stipulation as to the facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Pronto File 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 steel card filing cabinets in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing that the prices at which respondent's steel card filing cabinets are offered for sale constitute special or reduced or clearance sale prices when such prices are 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.

It is further ordered, That the respondent shall in 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 4379. Complaint, Nov. 16, 1940—Decision, Jan. 8, 1941

Where a corporation engaged in interstate sale and distribution of oil burners for installation and use in stoves and furnaces; in advertisements of its said products with respect to nature and effectiveness thereof in magazines and newspapers and in circulars, folders, and sales literature circulated among prospective purchasers in the various States and in said district—

(*a*) Represented and implied that it had invented a new type oil burner which it was offering and that said burner furnished more heat at smaller cost than did others on the market and burned cheaper oil and was automatic and furnished quick heat at the turn of a valve;

Facts being it was not a new type invention or new type oil burner and did not in its operation in any way involve any new principle, did not furnish more heat at smaller cost or accomplish other results attributed to or claimed for it, was not automatic but needed to be lighted each time used and did not furnish quick heat at the turn of a valve;

(*b*) Represented and implied through use of word "guarantee" that if performance of its said product was not as indicated through representations made by it as above set forth defective parts would be replaced or purchase money refunded without cost and unconditionally;

Facts being it required purchaser to conduct experimental tests over a definite period of time after it had received notice from him that burner was not operating as represented or in a satisfactory manner, and time used to make tests required before it would refund purchase price and time consumed in exchange of correspondence in such a manner were usually so great that period of time fixed by it within which burner must be returned to secure refund had expired and purchaser was not entitled thereto under terms and conditions of said guarantee, which was not, as represented, unconditional; and

(*c*) Represented and implied through statement "Write Immediately for FREE BURNER OFFER TO AGENTS who will demonstrate and take orders," that agents would be furnished burners without cost to them for making demonstrations in connection with solicitation of orders therefor;

Facts being it did not supply agents with burner without cost and unconditionally for their use as aforesaid but furnished them burners for said purposes only upon payment to it of $15 regular retail price thereof or after agent had sold burners and such consideration either in services or money was required of each agent before burner was delivered to him;

With effect through use of such acts, practices, and methods of misleading and deceiving substantial portions of purchasing public into erroneous and mistaken belief that said statements and implications were true and of caus-

ing members of the public because of such belief thus engendered to purchase its burners:

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

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

PARAGRAPH 1. Respondent, 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 principal office and place of business at Thirteenth and McGee Streets, Kansas City, Mo. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of oil burners for installation and use in stoves and furnaces.

In the course and conduct of its business, respondent causes its said products, when sold, to be transported from its place of business in the State of Missouri 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. In the course and conduct of its said business and for the purpose of inducing the purchase of its said products, respondent has made false and misleading representations with respect to the nature and effectiveness in use of its said oil burners. Such representations have been, and are being, made by means of advertisements in magazines and newspapers, and in circulars, folders, and sales literature circulated among prospective purchasers located in the various States of the United States and in the District of Columbia. Among and typical of such false and misleading representations are the following:

New-TYPE Cheap
OIL BURNER
INVENTED
Sweeping the Country!
COOK and HEAT Without Coal or Wood
In your Present Stove or Furnace—
HOTTER—No Drudgery, Dirt or Ashes—More Heat
Quick at SMALL COST.
OVER 40,000 SOLD
GUARANTEED

Beats any cheap burner ever gotten out for low cost, perfect performance. Burns cheap oil a new way, without pre-generating or clogging up. Quick intense heat *by Simple Turn of Valve.*

* * *

Quick HEAT At
Turn of Valve!

* * *

Write Immediately for
FREE BURNER
OFFER TO AGENTS
who will demonstrate and take orders.

Through the use of the foregoing representations and others of similar import and meaning not set out herein, respondent represents and implies that it has invented a new-type oil burner and the burner offered for sale is this new-type invention; that said burner furnishes more heat at a smaller cost than do other burners on the market; that said burner burns cheap oil in a new way; that it performs perfectly, without pre-generating the oil and without clogging up; and that said burner furnishes quick heat at the turn of a valve. Through the use of the word "guaranteed," respondent represents and implies that, if the performance of said burners is not as indicated through the representations made by respondent, defective parts will be replaced, or purchase money refunded, without cost and unconditionally. Respondent represents and implies that agents will be furnished burners without any cost to them for use in making demonstrations in connection with solicitation of orders.

PAR. 3. The above and foregoing representations and implications are grossly exaggerated, false, and misleading. In truth and in fact, respondent's said burner is not a new-type invention, it is not a new-type oil burner, and its operation does not in any way involve any new principle. Respondent's said burner does not furnish more heat at a smaller cost than do any other burners on the market. It does not burn cheap oil in a new way nor does it perform perfectly and without clogging up. Respondent's said burner is not automatic, as implied through the representation that it furnishes quick heat at the turn of a valve, but must be relighted each time it is used.

In truth and in fact, respondent's said burner is not unconditionally "guaranteed" as represented in said advertising matter, for respondent requires purchasers thereof to conduct experimental tests over a definite period of time after it has received notice from such purchasers that said burner is not operating in a satisfactory manner, and respondent places a time limit within which said burner must be returned to it before any refund will be made. The period of time used to make the tests required by respondent before refunding the purchase price for said burner and the time consumed in an exchange of correspondence between the purchaser and the respondent with regard to said burner are usually so great that the period of time fixed by respondent within which the burner must be returned to secure a refund has expired and the purchaser is not entitled to a refund under the terms and conditions of respondent's so-called "guarantee."

In truth and in fact, respondent does not supply to agents burners without cost and unconditionally for use in making demonstrations in connection with the solicitation of orders for said burners, but furnishes such agents a burner for demonstration purposes only upon payment of $15, the regular retail price of such burner, or after an agent has sold five of said burners. Each agent is required to pay for said burner before it is delivered to him either in money or in services.

PAR. 4. The use by the respondent of the aforesaid acts, practices, and methods in connection with the sale and distribution of its said burners in said commerce 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 and implications are true, and causes many members of the purchasing public, because of said erroneous and mistaken belief engendered as aforesaid, to purchase respondent's said burners.

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 November 16, 1940, issued, and on November 18, 1940, served, its complaint in this proceeding upon respondent, United Factories, Inc., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 6, 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, 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 principal office and place of business at Thirteenth and McGee Streets, Kansas City, Mo. Respondent is now, and for more than two years last past has been, engaged in the sale and distribution of oil burners for installation and use in stoves and furnaces. In the course and conduct of its business, respondent causes its said product, when sold, to be transported from its place of business in the State of Missouri to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent now 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. The respondent, in the course and conduct of its said business and for the purpose of inducing the purchase of its said products, has made false and misleading representations with respect to the nature and effectiveness in use of its said oil burners. Such representations have been, and are being, made by means of advertisements in magazines and newspapers, and in circulars, folders, and sales literature circulated among prospective purchasers located in the various States of the United States and in the District of Columbia. Among and typical of the false and misleading representations so made and circulated are the following:

New-TYPE Cheap
OIL BURNER
INVENTED
Sweeping the Country!
COOK and HEAT Without Coal
or Wood
In Your Present Stove or Furnace—
HOTTER—No Drudgery, Dirt or Ashes—More Heat
Quick at SMALL COST
OVER 40,000 SOLD
GUARANTEED

Beats any cheap burner ever gotten out for low cost, perfect performance. Burns cheap oil a new way, * * *. Quick intense heat *by Simple Turn of Valve.*

* * *

Quick Heat At
Turn of Valve!

* * *

Write Immediately for
FREE BURNER
OFFER TO AGENTS
who will demonstrate and take orders.

PAR. 3. The respondent, through the use of the foregoing representations and others of similar import and meaning not set-out herein, represents and implies that it has invented a new-type oil burner; that the burner offered for sale is this new-type invention; that said burner furnishes more heat at a smaller cost than do other burners on the market; that said burner burns cheap oil in a new way; that it performs perfectly; and that said burner is automatic and furnishes quick heat at the turn of a valve.

PAR. 4. The above and foregoing representations and implications are grossly exaggerated, false, and misleading. In truth and in fact, respondent's said burner is not a new-type invention or a new-type oil burner and its operation does not in any way involve any new principle. Respondent's said burner does not furnish more heat at a smaller cost than do any other burners on the market. It does not burn cheap oil in a new way nor does it perform perfectly. Respondent's said burner is not automatic nor does it furnish quick heat at the turn of a valve. It must be lighted each time it is used.

PAR. 5. Respondent, through the use of the word "guaranteed," represents and implies that if the performance of said burner is not as indicated through the representations made and used by the respondent as hereinabove set forth, defective parts will be replaced or purchase money refunded without cost and unconditionally.

In truth and in fact, respondent's said burner is not unconditionally "guaranteed" as represented by the respondent in its advertising matter, for respondent requires a purchaser thereof to conduct experimental tests over a definite period of time after respondent has received notice from such a purchaser that said burner is not operating as represented or in a satisfactory manner, and respondent places a time limit within which a burner must be returned to it before any refund will be made. The time used to make the tests required by respondent before it will refund the purchase price of a burner and the time consumed in an exchange of correspondence between the purchaser and the respondent with regard to an unsatisfactory

burner are usually so great that the period of time fixed by the respondent within which a burner must be returned to it in order to secure a refund has expired and the purchaser is not entitled to a refund under the terms and conditions of respondent's so-called "guarantee."

PAR. 6. Through the use of the statement "Write immediately for free burner offer to agents who will demonstrate and take orders," respondent represents and implies that agents will be furnished burners without any cost to them for use in making demonstrations in connection with the solicitation of orders for such burners.

In truth and in fact, respondent does not supply agents with burners without cost and unconditionally for use in making demonstrations in connection with the solicitation of orders for said burners. Respondent furnishes agents a burner for demonstration purposes only upon the payment to it of the sum of $15, the regular retail price of a burner, or after an agent has sold five burners. Each agent is required to pay for the burner before it is delivered to him, either in services or in money.

PAR. 7. The use by the respondent of the aforesaid acts, practices and methods in connection with the sale and distribution of its said burners in said commerce 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 and implications are true, and causes members of the purchasing public, because of said erroneous and mistaken belief, engendered as aforesaid, to purchase respondent's said burners.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, United Factories, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its oil burners in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, in any manner, that its oil burner is a new type invention, or a new type oil burner, or that its operation involves any new principle or that it furnishes more heat at smaller cost than other similar burners on the market, or that it burns cheap oil in a new way, or that it performs perfectly, or that it is automatic, or that it furnishes quick, intense heat at the turn of a valve.

2. Representing, in any manner, that said burner is "guaranteed," unless the terms and conditions of such "guarantee" are set out in immediate conjunction with the word "guarantee" or any reference to such "guarantee," and such terms and conditions are such that they may reasonably be complied with.

3. Representing, in any manner, that its said oil burners are furnished to agents without cost and unconditionally for use in making demonstrations in connection with the solicitation of orders therefor.

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

IN THE MATTER OF

WHITE KING 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 3928. Complaint, Oct. 14, 1939—Decision, Jan. 10, 1941

Where a corporation engaged as subsidiary of manufacturing consumer in interstate sale and distribution of various soaps in active competition with others also engaged in sale and distribution of laundry and toilet soaps and other products used for similar purposes in commerce as aforesaid; in advertising certain of its said products in newspapers and other publications circulated among the various States and in folders, circulars, and other printed matter distributed to members of the purchasing public as aforesaid and in continuities broadcast from radio stations of extrastate audience—

(*a*) Representing that its White King Granulated Soap was the only soap with which fabrics could be satisfactorily washed in cool water and that washing of fabrics in cool water caused them to be brighter and whiter than if done in hot water and that washing of fabrics in latter caused them to shrink and fade whereas, through use of its said soap with cool water such fading and shrinking would be prevented;

Facts being its said soap was not the only one permitting satisfactory use of cool water for purposes aforesaid, certain fabrics are preferably washed in cool water while best results for others are obtained with hot water, and its statements aforesaid with respect to consequences of use of cool or hot water as case might be were false and misleading, question of fastness of colors depending largely upon dye used and question of shrinking being dependent largely upon nature and quality of fabric, and action of water and soap used having no actual effect on fading or shrinkage;

(*b*) Represented that the use of its said soap in washing textiles made it unnecessary to use bleaching and bluing and that through application of a jelly made from soap, all spots and stains on fabric treated would be removed and that such soap was superior in quality and effectiveness to all others;

Facts being said statements were false and misleading, use of said soap does not make unnecessary bleaching and bluing, which, regardless of soap used, are necessary in washing certain types of fabrics, and, while use of jelly made of soap in question would remove certain spots, there were others including mildew and indelible ink which could not be so removed, as soap in question contained no ingredients which rendered same superior in quality or effectiveness in use to others of similar general character on the market; and

(*c*) Represented that its White King Toilet Soap would keep the skin fresh and supple and use thereof would remove and prevent wrinkles in skin of users;

Facts being said product would not accomplish such results and contained no ingredients which rendered it substantially different from other toilet soaps of the same general character;

With effect of misleading and deceiving substantial portions of purchasing public into erroneous and mistaken belief that such statements and representations were true and with result, as consequence of such belief, that said public was induced to and did purchase substantial quantities of its said products and trade was thereby diverted unfairly to it from its competitors aforesaid; to the substantial injury of competition in commerce:

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

Before *Mr. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners.

Mr. B. G. Wilson for the Commission.

Dockweiler & Dockweiler, of Los Angeles, Calif., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that White King Soap 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 White King Soap Co. 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 at 617 East First Street, Los Angeles, Calif.

Par. 2. The respondent is now, and has been for several years last past, engaged in the business of selling and distributing a laundry soap designated "White King Granulated Soap," a toilet soap designated "White King Toilet Soap" and other soaps in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said soaps, when sold, to be shipped or transported from its place of business in the State of California or from the State of origin of the shipment thereof to purchasers thereof at their respective points of location in various States of the United States, other than the State of origin of the shipment thereof, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said soaps in commerce among and between the various States of the United States and in the District of Columbia.

In the course and conduct of its business, respondent is in competition with other corporations and with partnerships, firms, and indi-

viduals, also engaged in the sale and distribution of laundry and toilet soaps and other products used for similar purposes in commerce between and among the various States of the United States and in the District of Columbia. Among such competitors in said commerce are many who do not in any manner misrepresent the properties or the efficacy of their respective soaps or other products.

PAR. 3. In the course and conduct of its said business and for the purpose of inducing the purchase of its said products, respondent has caused advertisements containing statements and representations with respect to the properties of its said products, and the results that may be expected to be obtained from the use thereof, to be inserted in advertisements in newspapers and other publications having a circulation among and between the various States of the United States and in the District of Columbia, in circulars, folders, booklets, and other printed matter distributed to members of the purchasing public situated in various States of the United States and in the District of Columbia, and in continuities broadcast from radio stations which convey the programs emanating therefrom to the listeners thereto situated in the various States of the United States and in the District of Columbia.

Among and typical of said statements and representations, used and disseminated by respondent as aforesaid, regarding respondent's White King Granulated Soap, are the following:

Hot water is destructive. It makes hands red and ugly. It makes fine fabrics harsh and brittle. It shrinks mats and woolens. It fades colors. It is expensive. Why use it? White King—the COOL WATER SOAP.

Save ⅓ in soap—learn to measure White King. Every package contains ⅓ more soap value.

With White King Granulated Soap, the one cool water soap, you never have to use hot water for White King's longer lasting suds do all their work in water comfortable cool to the hands.

But remember, cool-water washing is possible with WHITE KING only—it's the one soap that washes thoroughly in water at 98 degrees.

HOW TO REMOVE SPOTS AND STAINS: Stains as well as soil on collars and cuffs can be easily removed by applying White King Granulated Soap jell on the stained or soiled parts of the dry fabric. Let stand 15 minutes. Wash usual way.

Free Bleach—Free Blue—clothes washed with White King are washed CLEAN—no need to cover up the poor cleansing action of lazy soaps—Your linens are snowy white when washed the White King Cool Water Way—Saves what you spend for bleach and blue.

Be neutral * * * To wash fine fabrics without injury to color or fabric a soap must be neutral—that is, contain no free alkali . . . Quick Dissolving White King Granulated is a neutral soap, safe for all fine fabrics.

RED ACHING HANDS, runs in hosiery, harsh woolens, silks, rayons, faded colors—What causes them? Hot Water is the answer.

* * * it does three times the work of ordinary soaps.

* * * it actually protects the fabrics and your hands with its superior ingredients.

White King won't shrink or fade fine materials.

HOT WATER causes hands to become reddened, rough, dry and harsh looking. WHITE KING in Cool Water keeps hands soft and lovely.

Laundering in COOL WATER prevents reddened, "hot water hands."

Your hands are never parched or reddened, for WHITE KING washes efficiently in water so cool that it cannot possibly harm them!

No other washing method can keep them that way, because ordinary soaps require water so hot it cracks and roughens hands!

And White King is so kind to your hands too! Even when you wash dishes three times a day and have your hands in water many times in between, with White King it's easy to keep them smooth and white.

You're missing that extra whiteness in your clothes that marks you as a meticulous housewife. You're missing that extra money that WHITE KING GRANULATED SOAP saves you with its sensible economy. And you're missing those extra hours of leisure that WHITE KING makes possible with its busy, active suds. So start using WHITE KING GRANULATED SOAP NOW * * * you're entitled to all these advantages that WHITE KING alone can give you.

Among and typical of said statements and representation used and disseminated by respondent as aforesaid regarding respondent's White King Toilet Soap are the following:

The soap that's so rich in beauty oils that it's safe for every type of skin. Let its pure, bland lather reach deep down in the pores * * * removing all dirt and stale make-up, leaving the skin refreshed.

But wrinkles disappear if the skin is soft and pliable. And regular use of White King Toilet Soap is one of the surest ways to keep your skin so fresh and supple that it's almost wrinkleproof.

PAR. 4. Through the use of the aforesaid statements and representations relative to respondent's White King Granulated Soap, and other statements and representations of similar import and meaning not herein set-out, the respondent represents that White King Granulated Soap is the only soap with which articles can be satisfactorily washed in cool water and in water at 98° temperature, that the washing of clothes in cool water causes them to be brighter and whiter than washings in hot water, that users of said soap get one-third more in soap value because of the use thereof than users of any other soaps, that the use of said soap in washing textiles makes it unnecessary to use bleaching and bluing, that the washing of articles with said soap will remove all spots and stains therefrom, that said soap is three times as efficient in the cleansing of articles as other soaps, that the ingredients of said soap are superior to the ingredients of all other soaps, that the washing of fabrics in hot water injures the fabrics and causes them to shrink and fade, that the use of hot water in washings causes the hands to be red and ugly but that the use

of cool water does not have such effect, and that the use of said soap in washings prevents fine fabrics from fading or shrinking.

Through the use of the aforesaid statements and representations relative to respondent's White King Toilet Soap, and other statements and representations of similar import or meaning not herein set out, the respondent represents that the use of said soap keeps the skin fresh and supple regardless of the age or the condition of the skin of the user thereof, that the use of said soap prevents wrinkles and removes wrinkles.

PAR. 5. The aforesaid statements and representations by respondent are false and misleading. In truth and in fact, said White King Granulated Soap is not the only soap with which articles can be satisfactorily washed in cool water or in water at 98° temperature. There are other soaps on the market with which articles can be satisfactorily washed in cool water and with water at 98° temperature. Washing clothes in cool water does not always cause such clothes to be brighter or whiter than washings in hot water. In fact, in many cases the washing of clothes in hot water causes them to be brighter and whiter than washings in cool water. Users of said soap do not get one-third more in soap value than users of other soaps. There are other soaps on the market equal in soap value to respondent's said soap. The washing of textiles with said soap does not make it unnecessary to use bleaching and bluing. Some textiles are normally washed without bleaching and bluing but other textiles may require bleaching and bluing regardless of the soap used. The washing of articles with said soap will not remove all stains and spots therefrom. Said soap is not three times as efficient in the cleansing of articles as other soaps on the market. The ingredients of said soap and the efficiency thereof in cleansing articles are not superior to the ingredients and the efficiency in cleansing of other good quality soaps on the market. All fabrics do not fade or shrink when washed in hot water and are not injured by washings in hot water. Cool water will produce the same effect on the hands as hot water, but cool water requires a longer period of time to produce such effect. The use of said soap does not prevent fine fabrics from shrinking or fading in washings. The fastness of the color of textiles in washings depends largely upon the dye used and the shrinkage of textiles in washings is dependent upon the action of the water. The kind of soap used in washing textiles has very little effect on the fastness of the color or of the resistance to shrinkage of the textiles.

In truth and in fact, the use of said White King Toilet Soap will not keep the skin fresh or supple and will not prevent wrinkles or remove wrinkles.

PAR. 6. The use by respondent of the foregoing false and misleading statements, representations, and advertisements 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 products possess the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said products. As a result, trade has been diverted unfairly to the respondent from its said competitors who do not falsely advertise the effectiveness in use of their respective soaps or other products. In consequence thereof, substantial injury has been, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 14, 1939, issued and subsequently served its complaint in this proceeding upon respondent, White King Soap 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 thereo, testimony and other evidence in support of the allegations of said complaint and in opposition thereto were introduced before examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint (respondent not having filed brief or requested oral argument) and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the

public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, White King Soap Co., 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 at 617 East First Street, Los Angeles, Calif. Said respondent is a wholly owned and controlled subsidiary of the Los Angeles Soap Co., also a corporation organized under the laws of the State of California with its principal place of business at Los Angeles, in said State. The respondent, White King Soap Co., is now, and has been, engaged for a number of years in the business of selling and distributing a laundry soap, designated "White King Granulated Soap," a toilet soap, designated "White King Toilet Soap," and other soaps, all of which are manufactured by the Los Angeles Soap Co.

Respondent has caused said soaps, when sold, to be transported from its place of business at Los Angeles 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 has maintained a course of trade in its said products in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business, the respondent has been and is now in active competition with various persons and partnerships and with other corporations also engaged in the sale and distribution of laundry and toilet soaps, and other products used for similar purposes, 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 and for the purpose of inducing the purchase of its products, respondent has caused advertisements containing statements and representations with respect to the properties of its said products, and the results that may be expected to be obtained from the use thereof, to be inserted in newspapers and other publications having a circulation among and between the various States of the United States, and in circulars, folders, booklets, and other printed matter distributed to members of the purchasing public situated in various States of the United States, and in continuities broadcast from radio stations which convey the programs emanating therefrom to the listeners thereto situated in various States of the United States.

Among and typical of said statements and representations used and disseminated regarding respondent's White King Granulated Soap are the following:

Hot water is destructive. It makes hands red and ugly. It makes fine fabrics harsh and brittle. It shrinks mats and woolens. It fades colors. It is expensive. Why use it? White King—the COOL WATER Soap.

Save ⅓ in soap—learn to measure White King. Every package contains ⅓ more soap value.

With White King Granulated Soap, the one cool water soap, you never have to use hot water for White King's longer lasting suds do all their work in water comfortably cool to the hands.

But remember, cool-water washing is possible with WHITE KING only—it's the one soap that washes thoroughly in water at 98 degrees.

HOW TO REMOVE SPOTS AND STAINS: Stains as well as soil on collars and cuffs can be easily removed by applying White King Granulated Soap jell on the stained or soiled parts of the dry fabric. Let stand 15 minutes. Wash usual way.

Free Bleach—Free Blue—clothes washed with White King are washed CLEAN—no need to cover up the poor cleansing action of lazy soaps—Your lines are snowy white when washed the White King Cool Water Way—Saves what you spend for bleach and blue.

RED ACHING HANDS, runs in hosiery, harsh woolens, silks, rayons, faded colors—What causes them? Hot Water is the answer.

* * * it does three times the work of ordinary soaps.

* * * it actually protects the fabrics and your hands with its superior ingredients.

White King won't shrink or fade fine materials.

Among and typical of such statements and representations used and disseminated regarding respondent's White King Toilet Soap are the following:

But wrinkles disappear if the skin is soft and pliable. And regular use of White King Toilet Soap is one of the surest ways to keep your skin so fresh and supple that it's almost wrinkle-proof.

Through the use of the statements and representations hereinabove set forth, and others similar thereto, not set-out herein, the respondent represented, among other things, that said product designated "White King Granuated Soap" was the only soap with which fabrics can be satisfactorily washed in cool water; that the washing of fabrics in cool water causes them to be brighter and whiter than if washed in hot water; that the use of such soap in washing textiles makes it unnecessary to use bleaching and bluing; that by the application of a jelly made from respondent's soap all spots and stains on the fabric treated will be removed; that said soap is superior in quality and effectiveness to all other soaps; that the washing of fabrics in hot water causes them to shrink and fade; that by the use of such

soap in the washing of fabrics in cool water, fading and shrinking of such fabrics will be prevented.

Through the use of the aforesaid statements and representations relative to respondent's product designated as "White King Toilet Soap," the respondent represented that the use of said soap will keep the skin fresh and supple, and that the use of such soap will prevent and remove wrinkles in the skin of the user.

PAR. 3. The Commission finds that the statements and representations made by respondent as set-out in paragraph 2 hereof are false and misleading. In truth and in fact, respondent's soap designated "White King Granulated Soap" is not the only soap with which fabrics can be satisfactorily washed in cool water. Such fabrics as silks and woolens are preferably washed in cool water, while best results are obtained by washing cotton fabrics in hot water. The washing of all fabrics in cool water does not cause such fabrics to be brighter and whiter than when washed in hot water. White cotton fabrics are brighter and whiter when washed in hot water than when washed in cool water. The washing of textiles with such soap does not make it unnecessary to use bleaching and bluing. In washing certain types of fabrics it is necessary to use bleaching and bluing, regardless of the soap used. While the use of a jelly made from said soap will remove certain spots or stains from fabrics, there are other spots and stains, such as mildew and indelible ink stains, which cannot be so removed. The Commission finds that respondent's soap contains no ingredients which render such soap superior in quality or effectiveness in use to other soaps of the same general character on the market. All fabrics do not fade or shrink when washed in hot water. The use of said soap does not prevent fabrics from fading or shrinking. In truth and in fact, the fastness of the color of textiles depends largely upon the dye used, and the shrinkage of textiles is dependent largely upon the nature and quality of the fabric and upon the action of the water. The kind of soap used has no material effect upon the fading or shrinkage of fabrics.

The Commission further finds that respondent's toilet soap designated "White King Toilet Soap" will not keep the skin fresh or supple nor will it prevent or remove wrinkles in the skin. Said soap contains no ingredients which render it substantially different from other toilet soaps of the same grade and character.

PAR. 4. The use by respondent of said false and misleading statements and representations concerning its said products 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. 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 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 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 to 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 examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (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 respondent, White King Soap 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 soaps designated "White King Granulated Soap" and "White King Toilet Soap," or any other soaps composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other names, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that said soap designated "White King Granulated Soap" is the only soap with which fabrics may satisfactorily be washed in cool water; that the washing of all types of fabrics in cool water causes such fabrics to be brighter or whiter than when

washed in hot water; that the use of said soap renders the use of bleaching and bluing unnecessary; that the use of a jelly made from said soap will remove all spots or stains from fabrics; that said soap is superior in quality or effectiveness to other soaps of the same general character on the market; that all fabrics fade or shrink when washed in hot water; that the use of said soap prevents fabrics from fading or shrinking.

2. Representing that said soap designated "White King Toilet Soap" will keep the skin fresh or supple, or prevent or remove wrinkles in 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

MAX KRAUSS, TRADING AS AMERICAN CORD & WEBBING COMPANY

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

Docket 4112. Complaint, Apr. 26, 1940—Decision, Jan. 10, 1941

Where an individual engaged in competitive interstate sale and distribution of cloth tape or web for use in manufacturing venetian blinds, and including among those to whom he sold said product, manufacturers or wholesalers of such blinds, for use in making same—

(*a*) Represented that all of his colors were produced by means of vat dyes, through such statements, on advertising folders distributed among prospective customers and displaying tape showing various colors in which such tape might be obtained, as "VAT DYES are the FASTEST Dyes known to science—made to resist the color destroying action of sunlight, washing, dry cleaning, etc.," "THE PERMANENCE OF VAT DYES is due both to their natural characteristics and to the processes by which they are applied. * * *," and "LABORATORY TESTS prove superior fastness of vat dyes";

Facts being not all of their said colors, as thus represented, were produced by means of vat dyes, but two of such colors portrayed on folder in question, namely, "Chinese Red" and "Black," were not vat dyes, but those produced by other methods, as was not disclosed in folder and descriptive matter referred to;

(*b*) Represented that the colors of his products were superior in fastness and durability to other colors used for similar purposes, and that his said products had been subjected to certain tests extending over designated periods and that results thereof demonstrated that colors used therein would not fade or change and that they were in fact impervious to effects of sunlight, through such statements in certain of his advertising material, displaying in parallel columns results, as there set forth, of tests made with an instrument producing "artificial sunlight, stronger than midday sun," and such statements therein, under respective captions "Direct or any Other Ordinary Commercial Colors," and "Yarn Dyed Vat Colors used in Lintex Brand Venetian Blind Web," as "Chocolate. Exposed 50 hours. Result—decided fade," and "Chocolate. Exposed 240 hours. Result—no appreciable sign of fading," and other more or less comparable statements for other colors;

Facts being that, as shown by tests made at instance of Commission, his colors were not superior in all cases to the other colors used for similar purposes, and were not impervious to the effects of sunlight and would not resist change for the periods of time designated by him, but faded appreciably when subjected to sunlight for periods of time which were much shorter than that which he designated;

(*c*) Made use of coined word "Lintex" as trade name for some of his products;

Facts being web or tape thus branded was made of cotton entirely and was not, as substantial portion of purchasing public would understand from use of word "Lintex," linen or fabric or product of flax, as long associated in mind

of purchasing public with word "linen," and was not such a product, preeminent qualities of which have long held esteem and confidence of public and for which there is marked preference on part of a substantial portion of the purchasing public over fabrics made of cotton; and

(*d*) Made use of coined word of "Siltex" as a trade name for some of its products;

Facts being the web or tape thus branded was made entirely of cotton and of rayon, which, when so manufactured as to simulate silk, has appearance and feel thereof and is by purchasing public practically indistinguishable therefrom, so that, when thus made and not designated as rayon, it is readily believed and accepted by said public as and for silk, and its said "Siltex" products were not, as substantial portion of purchasing public would understand from said word, made of silk, product of the cocoon of the silkworm, as long definitely understood by purchasing public, and products of which have long held esteem and confidence of public for their preeminent qualities and are preferred on the part of substantial portions of the public over products made of cotton and rayon;

With result, through use of said trade names to designate such products, and through failure to disclose that those designated "Siltex" were in fact composed in part of rayon, that there was placed in the hands of uninformed or unscrupulous jobbers means and instrumentality whereby such jobbers and dealers were enabled to mislead and deceive a substantial portion of members of purchasing public as to fiber content of products in question, and with the effect, as a result of the erroneous and mistaken beliefs on part of purchasing public, induced by his representations hereinbefore set forth, that such public was induced to purchase substantial quantities of his products, and trade was thereby diverted unfairly to himself from his competitors aforesaid:

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

Mr. George W. Williams for the Commission.
Nathan & Nathan, 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 Max Krauss, an individual, trading as American Cord & Webbing Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, Max Krauss, is an individual trading as American Cord & Webbing Co., with his place of business at 394 Broadway, in the city of New York, State of New York. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution in commerce between and among the various States

of the United States and in the District of Columbia of cloth tape or web used in connection with Venetian blinds, upholstery, and other articles. Respondent causes and has caused such tape or web, when sold, to be shipped from his said place of business in the State of New York to purchasers in other States of the United States and in the District of Columbia.

In the course and conduct of his business said respondent has been and now is in competition with other individuals and with firms, partnerships, and corporations also engaged in the sale and distribution of similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business and for the purpose of inducing the purchase of his said products, respondent has made false and misleading representations with respect to the character and the fastness of the colors of his products and with respect to the constituent fibers or materials of which such products are made, such representations being made by means of circulars, folders and other advertising material distributed among prospective purchasers, by advertisements inserted in trade journals, and by other means.

Among the products sold and distributed by respondent is a variety of tapes which are colored by dyes known as "Vat Dyes." In connection with this line of his products, the respondent distributes among prospective purchasers an advertising folder to which are attached samples of certain of respondent's tapes showing the various colors in which such tapes may be obtained. On said folder the respondent makes the following representations:

VAT DYES are the FASTEST dyes known to science—made to resist the color destroying action of sunlight, washing, dry cleaning, etc.

THE PERMANENCE OF VAT DYES is due to both their natural characteristics and to the processes by which they are applied. They become soluble after chemical treatment. Later they are made insoluble through oxidation, which makes the color a permanent part of the fabric.

LABORATORY TESTS prove superior fastness of vat dyes.

Guaranteed Fastest to Sunlight * * * and Other Color Destroying Elements.

Said folder contains no statement indicating that any of the colors portrayed are not vat dyes.

Through the use of the foregoing representations, and other representations of similar import not specifically set out herein, and through such failure to disclose the facts with respect to said colors, the respondent represents that all of said colors are produced by means of vat dyes. In truth and in fact two of the said colors portrayed on said folder, to-wit, "Chinese Red" and "Black," are not "Vat dye" colors, but are colors produced by other methods, the color

"Chinese Red" being produced by a process known as the naphthol process, and the color "Black" being produced by a process known as the sulphur process.

PAR. 3. As illustrative of the purported fastness and durability of the dyes used to color his said products and of the purported superiority of such dyes over other dyes, the respondent has caused to be inserted in certain of his advertising material charts or tables, among and typical of which is the following:

COMPARATIVE FADE-OMETER*

Tests made on colors most likely affected by sunlight.

Direct or Any Other Ordinary Commercial Colors	Yarn Dyed Vat Colors Used in Lintex Brand Venetian Blind Web
Chocolate Exposed 50 hours Result—decided fade	Chocolate Exposed 240 hours Result—no appreciable sign of fading
Mulberry Exposed 60 hours Result—change in color	Mulberry Exposed 250 hours Result—no change in color
Cream Exposed 50 hours Result—faded	Cream Exposed 200 hours Result—the same color retained
Navy Blue Exposed 40 hours Result—faded streaky light blue	Navy Blue Exposed 240 hours Result—color uniformity maintained

Similar tests have been made on all of the other colors with comparable results.

*FADE-OMETER is an instrument producing artificial sunlight, stronger than midday sun.

Through the use of the foregoing representations, and others of similar import not set-out herein, the respondent represents that the colors of his products are superior in fastness and durability to other colors used for similar purposes; that respondent's products have been subjected to certain tests extending over certain designated periods of time, and that the results of such tests demonstrate that the colors used in respondent's products will not fade or change; that such colors, in fact, are impervious to the effects of sunlight.

In truth and in fact, the colors of respondent's products are not superior in all cases to the colors used for other similar products. Respondent's colors are not impervious to the effect of sunlight, nor will such colors resist change for the periods of time designated by

respondent. In truth and in fact, the colors of respondent's products fade appreciably, when subjected to authentic tests for periods of time which are much shorter than the periods designated by respondent.

PAR. 4. A further practice of the respondent is the use of the trade names "Lintex" and "Siltex" to designate or describe certain of his products.

Through the use of the word "Lintex" the respondent represents that the products so designated are made of linen, when in truth and in fact such products contain no linen, but are composed entirely of cotton. The term "linen" for many years last past has had and now has in the minds of the purchasing public a definite and specific meaning, to wit, fabrics made from flax. Linen products for many years have held, and still hold, the esteem and confidence of the public for their preeminent qualities, and there is a marked preference on the part of a substantial portion of the purchasing public for linen fabrics over fabrics made of cotton.

Through the use of the word "Siltex" the respondent represents that the products so designated are made of silk, when in truth and in fact such products contain no silk, but are made of cotton and rayon. The term "silk" for many years last past has had and now has in the minds of the purchasing public a definite and specific meaning, to wit, the product of the cocoon of the silkworm. Silk products for many years have held, and still hold, the esteem and confidence of the public for their preeminent qualities, and there is a marked preference on the part of a substantial portion of the purchasing public for products made of silk over products made of cotton and rayon.

Rayon is a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk and, when so manufactured, it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities rayon, when manufactured to simulate silk and not designated as rayon, is readily believed and accepted by the purchasing public as being silk, the product of the cocoon of the silk worm.

Through the use of the aforesaid trade names to designate his said products, and through his failure to disclose that products designated "Siltex" are in fact composed in part of rayon, the respondent has placed in the hands of uninformed or unscrupulous jobbers and retail dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 5. The use by the respondent of the acts and practices herein alleged has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the respondent's products possess qualities which

they do not in fact possess and that such products are made of certain designated fibers or materials, when such is not the fact. As a result of such erroneous and mistaken belief, the purchasing public has been induced to purchase substantial quantities of respondent's products, and thereby trade in such products has been diverted unfairly to the respondent from his competitors. In consequence, substantial injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 26th day of April 1940, issued and subsequently served its complaint in this proceeding on said respondent, Max Krauss, an individual, trading as American Cord & Webbing 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 said act. On the 6th day of June 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 executed by respondent's counsel, Nathan & Nathan, 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 presentation of argument or the filing of briefs. Respondent 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Max Krauss, is an individual trading as American Cord & Webbing Co., with his place of business at 394 Broadway, in the city of New York, State of New York. Respondent is now, and for many years last past has been, engaged in the sale and distribution, in commerce, between and among the various States of the United States, and in the District of Columbia of cloth tape or web used in connection with the manufacture of venetian blinds. Respondent causes, and has caused, such tape or web, when sold, to be shipped from his place of business in the State of New York to purchasers in other States of the United States, and in the District of Columbia.

In the course and conduct of his business, respondent has been and now is, in competition with other individuals, firms, partnerships, and corporations also engaged in the sale and distribution of webbing used in connection with the manufacture of venetian blinds, in commerce between and among the various States of the United States, and in the District of Columbia.

Respondent sells and distributes this tape or web to manufacturers or wholesalers of venetian blinds, for use in the making of such blinds. Respondent does not sell tape or webbing to retailers or to the general consuming public.

PAR. 2. Among the products sold and distributed are a variety of tapes which are colored by dyes known as Vat Dyes. In connection with this line of products respondent distributes among prospective customers, among other things, an advertising folder to which are attached samples of respondent's tapes showing the various colors in which such tapes may be obtained. On said folder respondent makes the following representations:

VAT DYES are the FASTEST Dyes known to science—made to resist the color destroying action of sunlight, washing, dry cleaning, etc.

THE PERMANENCE OF VAT DYES is due both to their natural characteristics and to the processes by which they are applied. They become soluble after chemical treatment. Later they are made insoluble through oxidation, which makes the color a permanent part of the fabric.

LABORATORY TESTS prove superior fastness of vat dyes.

Guaranteed Fastest to Sunlight * * * and Other Color Destroying Elements.

Said folder contains no statement indicating that any of the colors portrayed are not vat dyes.

Through the use of the foregoing statements and others of similar import, and through such failure to disclose the facts with respect to said colors, all of said colors are represented as being produced by

means of vat dyes, when, in fact, two of the said colors portrayed on said folder, to wit, "Chinese Red" and "Black," are not "Vat dye" colors, but are colors produced by other methods, the color "Chinese Red" being produced by a process known as the naphthol process, and the color "Black" being produced by a process known as the sulphur process.

PAR. 3. As illustrative of the purported fastness and durability of the dyes used to color his said products and of the purported superiority of such dyes over other dyes, the respondent has caused to be inserted in certain of his advertising material charts or tables, among and typical of which is the following:

COMPARATIVE FADE-OMETER *

Tests made on colors most likely affected by sunlight.

Direct Or any Other Ordinary Commercial Colors.	Yarn Dyed Vat Colors used in Lintex Brand Venetian Blind Web.
Chocolate	Chocolate
Exposed 50 hours	Exposed 240 hours
Result–decided fade	Result–no appreciable sign of fading
Mulberry	Mulberry
Exposed 60 hours	Exposed 250 hours
Result–change in color	Result–no change in color
Cream	Cream
Exposed 50 hours	Exposed 200 hours
Result–faded	Result–the same color retained.
Navy Blue	Navy Blue
Exposed 40 hours	Exposed 240 hours
Result–faded streaky light blue	Result–color uniformity retained

Similar tests have been made on all of the other colors with comparable results.

* FADE-OMETER is an instrument producing artificial sunlight, stronger than midday sun.

Through the use of the foregoing statements, and others of similar import not set-out herein, it is represented by respondent that the colors of his products are superior in fastness and durability to other colors used for similar purposes; that said products have been subjected to certain tests extending over certain designated periods of time, and that the results of such tests demonstrate that the colors used in said products will not fade or change; that such colors, in fact, are impervious to the effects of sunlight. In fact, as shown by tests made at the instance of the Federal Trade Commission, the colors of respondent's products are not superior in all cases to the other colors used for similar purposes and said colors are not impervious to the effects of sunlight nor will such colors resist change for the periods

of time designated by respondent, as the colors of said products fade appreciably, when subjected to sunlight, for periods of time which are much shorter than the periods designated by respondent.

PAR. 4. In the sale and distribution of its products respondent uses as the trade name for some of said products the coined word "Lintex."

The web or tape branded "Lintex" is made of cotton and contains no linen. The term "linen" for many years last past, has had, and now has, in the minds of the purchasing public a definite and specific meaning, to wit, fabrics made from flax. Linen products for many years have held, and still hold, the esteem and confidence of the public for their preeminent qualities, and there is a marked preference on the part of a substantial portion of the purchasing public for linen fabrics over fabrics made of cotton. Through the use of the word "Lintex," a substantial portion of the purchasing public would understand that the products so designated are made of linen, when, in fact, such products contain no linen but are composed entirely of cotton.

PAR. 5. In the sale and distribution of its products respondent uses as a trade name for some of its products the coined word "Siltex."

The web or tape branded "Siltex" is made of cotton and rayon and contains no silk. The term "silk" for many years last past, has had, and now has, in the minds of the purchasing public a definite and specific meaning, to wit, the product of the cocoon of the silk worm. Silk products for many years have held, and still hold, the esteem and confidence of the public for their preeminent qualities, and there is a marked preference on the part of a substantial portion of the purchasing public for products made of silk over products made of cotton and rayon.

Rayon is a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk and, when so manufactured, it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities, rayon, when manufactured to simulate silk and not designated as rayon, is readily believed and accepted by the purchasing public as and for silk, the product of the cocoon of the silk worm.

Through the use of the word "Siltex" a substantial portion of the purchasing public would understand that the products so designated are made of silk, when, in fact, as aforesaid, such products contain no silk but are composed entirely of cotton and rayon.

PAR. 6. Through the use of the aforesaid trade names to designate said products, and through failure to disclose that the products designated "Siltex" are in fact composed in part of rayon, means and

instrumentalities have been placed in the hands of uninformed or unscrupulous jobbers and retail dealers whereby such jobbers and dealers are enabled to mislead and deceive a substantial number of the members of the purchasing public as to the fiber content of said products.

As a result of erroneous and mistaken beliefs on the part of the purchasing public, induced by the representations of the respondent hereinbefore detailed, the purchasing public has been induced to purchase substantial quantities of respondent's products, with the result that trade has been diverted unfairly to the respondent from competitors engaged in commerce among and between the various States of the United States.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, and the stipulation as to the facts entered into between Nathan & Nathan, counsel for the respondent herein, and W. T. Kelley, chief counsel for the Commission, which provides among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Max Krauss, an individual, trading as American Cord & Webbing Co., 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 tape or web for Venetian Blinds, do forthwith cease and desist from—

1. Representing that respondent's products are dyed with vat dyes when they are not in fact so dyed.

2. Representing that the colors of respondent's products will not change color or will not fade, or are impervious to the effects of sunlight, or representing that the colors of such products will successfully resist the effects of sunlight for specified periods of time when such products do in fact fade or change color by reason of such exposure.

3. Using the term "Lintex" to any way describe or refer to a product which is not composed of linen, or otherwise representing that products which are not composed of linen are linen or contain linen.

4. Using the term "Siltex" to any way describe or refer to a product which is not composed of silk, or otherwise representing that products which are not composed of silk are silk or contain silk.

5. Advertising, offering for sale, or selling products composed in whole or in part of rayon, without clearly disclosing the fact that such products are composed of rayon, and when they are composed in part of rayon and in part of other fibers or materials, all such fibers or materials, including the rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

6. Representing that respondent's products are composed of fibers or materials other than those of which such products are actually composed.

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

IN THE MATTER OF

W. E. ROBINSON & 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 4294. Complaint, Aug. 30, 1940—Decision, Jan. 10, 1941

Where a corporation 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 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 it 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 brokers' 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 or 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 respective 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 Maryland, 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.

Mr. Ernest Volkart, of Baltimore, Md., 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 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 W. E. Robinson & Co., Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located in Bel Air, Md. Respondent is engaged in the business of 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 them 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 fruits and 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 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 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 Maryland, 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 Mary-

land 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 Maryland, 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.

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, 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. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and answer as aforesaid, and the Commisison, 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 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. Respondent, W. E. Robinson & Co., Inc., is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located in Bel Air, Md. Respondent is engaged in the business of 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 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 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 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 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 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 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.

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 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 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 field broker, and in connection with the resale in interstate commerce of commodities purchased by respondent, the respondent, W. E. Robinson & Co., Inc., its agents, employees, and representatives, 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 com-

modities 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, W. E. Robinson & Co., Inc., its agents, employees, and representatives, 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 named in the caption hereof 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

HARRY A. GREENBERG, TRADING AS PIONEER SPECIALTY COMPANY, AND THE CANDYLAND COMPANY

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

Docket 4381. Complaint, Nov. 20, 1940—Decision, Jan. 10, 1941

Where an individual engaged in sale and distribution of candy and confectionery products including certain assortments of candy and other articles of merchandise which were 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, and which included (1) as illustrative, assortment consisting of 150 pieces of penny candy of uniform size and shape, together with souvenir pen and 18 larger pieces of candy, for sale and distribution to purchasers under a plan by which those securing by chance from such uniform pieces one of the 18 chocolate creams included therein, received, in addition, one of said 18 larger pieces, and purchaser of last of said penny pieces in assortment was entitled to and received without additional cost said souvenir pen; and (2) various other assortments of candy and other articles of merchandise involving lot or chance feature and similar to that above described from which they varied in detail only;

(*a*) Sold said assortments 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 involving game of chance or sale of a chance to procure an article of merchandise at a price which was much less than the normal retail price thereof, or additional pieces of candy without additional cost, 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 plan above described, 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 the sale of a chance to win something by chance or any other method that is 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 candy and other articles of 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 same or equivalent methods, and with effect, through use of said method by him and because of said game of chance, of diverting trade unfairly in commerce to him from his competitors aforesaid who do not use same or equivalent methods; to the substantial injury of competition in commerce; and

(*b*) Represented through use of word "factory" on his letterheads and by other means that he owned or operated a factory where his products were made and that he was the manufacturer thereof, facts being he purchased

all of his products from others and did not own or operate any factory or make any of his said products;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them mistakenly and erroneously to believe that he was the manufacturer of said products, for dealing directly with whom as such rather than with wholesalers, jobbers, or other dealers there is a preference on the part of a substantial portion of the purchasing public as affording lower prices and other advantages, and by causing them to purchase his products as manufacturer thereof, as aforesaid, and as owning and operating or controlling plant in which they are made:

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 Harry A. Greenberg, individually, and trading as Pioneer Specialty Co., and The Candyland 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, Harry A. Greenberg, is an individual, trading as Pioneer Specialty Co. and The Candyland Co., with his principal office and place of business located at 38 Crosby Avenue, Brooklyn, N. Y. Respondent is now, and for more than 5 years last past has been, engaged in the sale and distribution of candy and confectionery products 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 Brooklyn, N. Y., 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 for more than 5 years last past has been, a course of trade by respondent in said candy and confectionery 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 candy and confectionery 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 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 respondent, and is as follows:

This assortment consists of 150 pieces of candy of uniform size and shape, together with a souvenir pen and 18 larger pieces of candy. One hundred and thirty-two of the said 150 pieces of candy of uniform size and shape are vanilla creams, and the remaining 18 are chocolate creams. The color of each of the said 150 pieces of candy is effectively concealed from purchasers and prospective purchasers until a purchase has been made and the candy broken open. All of the said 150 pieces of candy retail at the price of 1 cent each. Purchasers procuring one of the said 18 chocolate creams are entitled to, and receive, without additional cost, one of the said larger pieces of candy. Purchasers procuring one of the said 132 vanilla creams receive nothing in addition thereto for the 1 cent paid. The purchaser of the last of the 150 pieces of candy of uniform size and shape in said assortment is entitled to, and receives, without additional cost, the said souvenir pen. The said pen and larger pieces 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 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 respondent's said candy and other articles of merchandise expose and sell the same to the purchasing public in accordance with the sales plan hereinabove set forth. 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 described. The use by respondent of said sales plan or method in the sale of said 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 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 which is much less than the normal retail price thereof, or additional pieces of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy and other articles of 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 candy and other articles of merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's said products in preference to products 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 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 in 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, as aforesaid, respondent, in soliciting the sale of, and in selling, his merchandise has represented, through the use of the word "factory" on his letterheads and by other means, that he owns or operates a factory where his products are manufactured and that he is the manufacturer of such products. In truth and in fact the respondent does not own or operate any factory, nor does he manufacture any of his products. The respondent purchases all of his products from other parties.

PAR. 6. 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. 7. The use by the respondent of the word "factory" on his letterheads and by other means, as hereinabove alleged, has had, and now has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them to mistakenly and erroneously believe that the respondent is the manufacturer of such products and owns and operates or controls the plant wherein such products are

manufactured, and to purchase respondent's products on account of such mistaken and erroneous belief.

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 November 20, 1940, issued and on November 22, 1940, served its complaint in this proceeding upon respondent Harry A. Greenberg, individually and trading as Pioneer Specialty Co. and The Candyland 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. Thereafter the respondent filed his answer, in which answer he admitted all 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. Respondent, Harry A. Greenberg, is an individual, trading as Pioneer Specialty Co. and the Candyland Co., with his principal office and place of business located at 38 Crosby Avenue, Brooklyn, N. Y. Respondent is now, and for more than 5 years last past has been, engaged in the sale and distribution of candy and confectionery products 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 Brooklyn, N. Y., 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 for more than 5 years last past has been, a course of trade by respondent in said candy and confectionery 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 corpo-

rations 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.

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 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 respondent, and is as follows:

This assortment consists of 150 pieces of candy of uniform size and shape, together with a souvenir pen and 18 larger pieces of candy. One hundred and thirty-two of the said 150 pieces of candy of uniform size and shape are vanilla creams, and the remaining 18 are chocolate creams. The color of each of the said 150 pieces of candy is effectively concealed from purchasers and prospective purchasers until a purchase had been made and the candy broken open. All of the said 150 pieces of candy retail at the price of 1 cent each. Purchasers procuring one of the said 18 chocolate creams are entitled to, and receive, without additional cost, one of the said larger pieces of candy. Purchasers procuring one of the said 132 vanilla creams receive nothing in addition thereto for the 1 cent paid. The purchaser of the last of the 150 pieces of candy of uniform size and shape in said assortment is entitled to, and receives, without additional cost, the said souvenir pen. The said pen and larger pieces 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 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 respondent's said candy and other articles of merchandise expose and sell the same to the purchasing public in accordance with the sales plan hereinabove set forth. 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 described. The use by respondent of said sales plan or method in the sale of said 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 criminal laws.

PAR. 7. The sale of candy and other articles 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 which is much less than the normal retail price thereof, or additional pieces of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy and other articles of 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 candy and other articles of merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's said products in preference to products 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 game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or equivalent methods. As a result thereof, substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of his business, as aforesaid, respondent, in soliciting the sale of, and in selling, his merchandise has represented, through the use of the word "factory" on his letterheads and by other means, that he owns or operates a factory where his products are manufactured and that he is the manufacturer of such products. In truth and in fact the respondent does not own or operate any factory, nor does he manufacture any of his products. The respondent purchases all of his products from other parties.

PAR. 6. 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. 7. The use by the respondent of the word "factory" on his letterheads and by other means, as hereinabove found, has had, and

now has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them to mistakenly and erroneously believe that the respondent is the manufacturer of such products and owns and operates or controls the plant wherein such products are manufactured, and to purchase respondent's products on account 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 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, Harry A. Greenberg, individually and trading as Pioneer Specialty Co. and as The Candyland Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or any 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 thereof 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 dealers packages or assortments of any merchandise which are to be used, or may be used, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of candy, or any other merchandise, to the public.

3. Supplying to or placing in the hands of dealers any lottery device, either with assortments of merchandise or separately, which

lottery device is to be used, or may be used, in selling or distributing said merchandise to the public.

4. Packing or assembling in the same package, or packages, of candy or other merchandise for sale to the public at retail, pieces of candy of uniform size and shape having centers of a different color, together with larger pieces of candy, or other articles of merchandise, or separately, which said larger pieces of candy, or other articles of merchandise, are to be, or may be, given as prizes to purchasers procuring a piece of candy having a center of a particular color.

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

6. Using the word "Factory" in connection with respondent's trade names, or otherwise representing that respondent owns or operates a manufacturing plant, or that respondent manufactures his said 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

R. G. BOWE AND W. W. HARTMAN, TRADING AS BOWE & HARTMAN

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

Docket 4373. Complaint, Nov. 8, 1940—Decision, Jan. 11, 1941

Where two individuals engaged in interstate sale and distribution of their "Bowe's Tablets," medicinal preparation, in advertisements thereof which they disseminated and caused to be disseminated through the mails, and through other means in commerce, and through newspapers and periodicals, and through circulars, leaflets, and other advertising literature, and otherwise, and which were intended and likely to induce purchase of their said product—

(*a*) Represented, directly or by implication, that ulcers of the stomach, duodenum and intestines, gas on the stomach, sour stomach, indigestion, heartburn, constipation, nausea, pains around the heart, muscular pains, nervousness, melancholia, colds, headaches, dizziness, fatigue, lack of appetite, bad breath, and insomnia were due to or persisted because of hyperacidity or the presence of excess acid in the body, and that their said product was a cure or remedy for hyperacidity and thereby constituted a cure or remedy for the specific ailments and conditions mentioned, facts being that, while gastric hyperacidity might be associated with ulcers of the stomach and various other symptoms above set forth, it was not the cause of such conditions, and they did not persist solely because of hyperacidity and, while their said product would afford temporary neutralization of such hyperacidity, it did not constitute a cure or remedy therefor and possessed no therapeutic value in the treatment thereof, in excess of such temporary and palliative relief as it might afford in those cases where gastric hyperacidity was a concomitant factor; and

(*b*) Represented that they were manufacturing pharmacists, and that said preparation was made by them, facts being they did not manufacture their said preparation, but obtained same from other sources and were not, as aforesaid claimed, manufacturers, for dealing with whom there is a preference on the part of substantial portion of the purchasing public due to belief, in part, that thereby lower prices and other advantages may be obtained;

With effect of misleading and deceiving substantial portion of purchasing public with respect to their business status and as to the therapeutic properties of their said preparation, and with result of inducing such public to purchase substantial quantities 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. 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 R. G. Bowe and W. W. Hartman, individually, and trading as Bowe & Hartman, 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, R. G. Bowe and W. W. Hartman, are individuals trading as Bowe & Hartman, with their office and principal place of business located at 101 Summit Street in the city of Toledo, Ohio. Respondents are now and for more than 2 years last past have been, engaged in the sale and distribution of a medicinal preparation designated and described as "Bowe's Tablets."

In the course and conduct of their business, respondents cause said preparation, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained, a course of trade in their 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 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; 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 United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets and other advertising literature, are the following:

STOMACH ULCERS

If you are suffering from stomach trouble in any form, no matter how severe or long standing, including Ulcers, Constipation, Gas, Sick, Sour or Bloated Stomach, etc., Bowe's Tablets will give you quick positive relief or they are free to you * * *.

ULCERS

Stomach Trouble relief in a short time with

BOWE'S TABLETS

There is no need to suffer with indigestion; sick, sour or bloated stomach; heartburn; pains around the heart; ulcers or other digestive disturbances due to hyperacidity. Take BOWE'S TABLETS—a prescription, scientifically prepared for the purpose of neutralizing the acid condition of the stomach and healing tender membranes, no matter how severe or long standing your suffering, allowing digestion to proceed in a normal manner * * *.

STOMACH ULCERS

Stomach trouble in any form—Indigestion, Gas Pains, Nervousness, Sour or Bloated Stomach, Bad Breath—pains around the heart—due to hyperacidity quickly relieved by

BOWE'S TABLETS

* * * Guaranteed. Get results in 10 days or get your money back * * * * * * What you need is to correct the condition of hyperacidity that causes sour stomach, gas pains, indigestion, heartburn, colds, muscular pains, melancholy and ulcers of the stomach, duodenum and lower tracts.

Acidosis may be indicated by burning pains in the stomach, pain after eating, headaches, dizziness, belching, fatigue, melancholy, lack of appetite, colds, insomnia, nervousness and constipation.

Manufacturing Pharmacists.

PAR. 3. Through the use of the foregoing representations, and others of similar import not specifically set out herein, the respondents represent and have represented directly or by implication that ulcers of the stomach, duodenum and intestines, gas on the stomach, sour stomach, indigestion, heartburn, constipation, nausea, pains around the heart, muscular pains, nervousness, melancholia, colds, headaches, dizziness, fatigue, lack of appetite, bad breath and insomnia are due to, or persist because of, hyperacidity or the presence of excess acid in the body; that respondents' preparation is a cure or remedy for hyperacidity and thereby constitutes a cure or remedy for the specific ailments and conditions mentioned. Respondents further represent that they are manufacturing pharmacists and that said preparation is manufactured by them.

PAR. 4. The representations used and disseminated by the respondents as aforesaid are grossly exaggerated, false, and misleading. In truth and in fact, while gastric hyperacidity may be associated with

ulcers of the stomach, duodenum or intestines, gas on the stomach, sour stomach, indigestion, heartburn, constipation, nausea, pains around the heart, muscular pains, nervousness, melancholia, colds, headaches, dizziness, fatigue, lack of appetite, bad breath, and insomnia, it is not the cause of such conditions, nor do such conditions persist solely because of hyperacidity. Although the respondents' product will assist in the temporary neutralization of gastric hyperacidity, it does not constitute a cure or remedy for any of the conditions above enumerated. Said preparation possesses no therapeutic value in the treatment of such conditions in excess of such temporary and palliative relief as it may afford in those cases where gastric hyperacidity is a concomitant factor. Respondents are not manufacturing pharmacists and do not manufacture their said preparation but obtain said preparation from other sources.

PAR. 5. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with a manufacturer, such preference being due in part to a belief that thereby lower prices and other advantages may be obtained.

PAR. 6. The use by the respondents of the aforesaid false advertisements has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public with respect to respondents' business status and with respect to the therapeutic properties of respondents' preparation. As a result the purchasing public has been induced to purchase and has purchased substantial quantities of 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 November 8, 1940, issued and on November 9, 1940, served its complaint in this proceeding upon respondents R. G. Bowe and W. W. Hartman, individually, and trading as Bowe & Hartman, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On November 27, 1940, the respondents filed their answer, in which answer they admitted all the material allegations of facts 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. Respondents, R. G. Bowe and W. W. Hartman, are individuals trading as Bowe & Hartman, with their office and principal place of business located at 101 Summit Street in the city of Toledo, Ohio. Respondents are now, and for more than 2 years last past have been, engaged in the sale and distribution of a medicinal preparation designated and described as "Bowe's Tablets."

In the course and conduct of their business, respondents cause said preparation, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained, a course of trade in their 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 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; and respondents have also disseminated and are now disseminating, and have caused and are 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 United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets and other advertising literature, are the following:

STOMACH ULCERS

If you are suffering from stomach trouble in any form, no matter how severe or long standing, including Ulcers, Constipation, Gas, Sick, Sour or Bloated Stomach, etc., Bowe's Tablets will give you quick positive relief or they are free to you * * *

ULCERS

Stomach Trouble relieved in a short time with

BOWE'S TABLETS

There is no need to suffer with indigestion; sick, sour or bloated stomach; heartburn; pains around the heart; ulcers or other digestive disturbances due to hyperacidity. Take BOWE'S TABLETS—a prescription, scientifically prepared for the purpose of neutralizing the acid condition of the stomach and healing tender membrances, no matter how severe or long standing your suffering, allowing digestion to proceed in a normal manner * * *

STOMACH ULCERS

Stomach trouble in any form—Indigestion, Gas Pains, Nervousness, Sour or Bloated Stomach, Bad Breath—pains around the heart—due to hyperacidity quickly relieved by

BOWE'S TABLETS

* * * Guaranteed. Get results in 10 days or get your money back * * *

* * * What you need is to correct the condition of hyperacidity that causes sour stomach, gas pains, indigestion, heartburn, colds, muscular pains, melancholy and ulcers of the stomach, duodenum and lower tracts.

Acidosis may be indicated by burning pains in the stomach, pain after eating, headaches, dizziness, belching, fatigue, melancholy, lack of appetite, colds, insomnia, nervousness and constipation.

Manufacturing Pharmacists.

PAR. 3. Through the use of the foregoing representations, and others of similar import not specifically set out herein, the respondents represent and have represented directly or by implication that ulcers of the stomach, duodenum and intestines, gas on the stomach, sour stomach, indigestion, heartburn, constipation, nausea, pains around the heart, muscular pains, nervousness, melancholia, colds, headaches, dizziness, fatigue, lack of appetite, bad breath, and insomnia are due to, or persist because of, hyperacidity or the presence of excess acid in the body; that respondents' preparation is a cure or remedy for hyperacidity and thereby constitutes a cure or remedy for the specific ailments and conditions mentioned. Respondents further represent that they are manufacturing pharmacists and that said preparation is manufactured by them.

PAR. 4. The representations used and disseminated by the respondents as aforesaid are grossly exaggerated, false, and misleading. In truth and in fact, while gastric hyperacidity may be associated with ulcers of the stomach, duodenum or intestines, gas on the stomach, sour stomach, indigestion, heartburn, constipation, nausea, pains around the heart, muscular pains, nervousness, melancholia, colds, headaches, dizziness, fatigue, lack of appetite, bad breath, and insomnia, it is not the cause of such conditions, nor do such conditions persist solely because of hyperacidity. Although the respondents' product will assist in the temporary neutralization of gastric hyper-

acidity, it does not constitute a cure or remedy for any of the conditions above enumerated. Said preparation possesses no therapeutic value in the treatment of such conditions in excess of such temporary and palliative relief as it may afford in those cases where gastric hyperacidity is a concomitant factor. Respondents are not manufacturing pharmacists and do not manufacture their said preparation but obtain said preparation from other sources.

PAR. 5. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with a manufacturer, such preference being due in part to a belief that thereby lower prices and other advantages may be obtained.

PAR. 6. The use by the respondents of the aforesaid false advertisements has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public with respect to respondents' business status and with respect to the therapeutic properties of respondents' preparation. As a result the purchasing public has been induced to purchase and has purchased substantial quantities of 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 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, R. G. Bowe and W. W. Hartman, individually and trading as Bowe & Hartman, or trading under any other name, 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 known as Bowe's Tablets, or any other medicinal preparation of substantially similar composition, 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:

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 ulcers of the stomach, duodenum or intestines, gas on the stomach, sour stomach, indigestion, heartburn, constipation, nausea, pains around the heart, muscular pains, nervousness, melancholia, colds, headaches, dizziness, fatigue, lack of appetite, bad breath, or insomnia are caused by, or persist solely because of, hyperacidity; that respondents' preparation constitutes a cure or remedy for any of said ailments or conditions, or for hyperacidity; that said preparation possesses any therapeutic value in the treatment of any of said ailments or conditions, in excess of such temporary and palliative relief as it may afford by the neutralization of gastric hyperacidity in those cases where gastric hyperacidity is a contributing factor; that respondents are manufacturing pharmacists or that they manufacture said preparation.

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.

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

PUREX CORPORATION, LTD.

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

Docket 4074. Complaint, Mar. 29, 1940—Decision, Jan. 13, 1941

Where a corporation engaged in manufacture of its "Purex" chemical preparation for use as germicide, and in interstate sale and distribution thereof, 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 by circulars, leaflets, pamphlets, and other advertising literature—

(*a*) Represented, in its said advertising, that said product was "a most powerful germicide" and, directly and by implication, that such preparation possessed such powerful germicidal qualities that solution made by adding two tablespoonfuls thereof to gallon of water would, applied externally to livestock or other animals, destroy all bacteria and disinfect any surface cuts or sores; and

(*b*) Represented that such a solution would prevent spread of and destroy all bacteria on metal or wood equipment, through such statements as "* * * After thoroughly washing and cleaning equipment," "such as Milk cans, Milking Equipment, Feed Pans, Troughs, Etc.," "spray or soak with a disinfecting bath made by using two tablespoons PUREX to each gallon of water";

Facts being, while such a solution possessed disinfectant and germicidal qualities, it was not effective for all purposes and would not destroy all bacteria or absolutely disinfect surface cuts and sores, nor, used as recommended and directed, prevent spread of all bacteria, nor destroy all such life on metal or wood or any other kind of equipment, but degree of effectiveness thereof, used as disinfectant or antiseptic, was dependent upon concentration of solution and length of time of exposure, in order for solution of product in question to constitute competent and effective germicide or disinfectant in treatment of surface cuts and sores, in accordance with accepted medical practice, it would have to contain at least 10 percent by volume of preparation in question in its undiluted form, and solution diluted, as above set forth in such a "disinfectant bath," was not an absolute chemical disinfectant or germicide, capable of killing all bacterial life;

With result that purchasing public was caused to believe it such an absolute chemical disinfectant, etc., as above set forth, through use of word "disinfectant" as above stated, and portion of such public was also caused to believe that product in question possessed stronger germicidal qualities when used in solution recommended and directed, through statement "a most powerful germicide," than was actually the case, and with effect, through use of foregoing misleading statements and representations, disseminated as aforesaid, 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 quantity 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.

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

Mr. L. E. Creel, Jr. and *Mr. Robert Mathis, Jr.* for the Commission.

Mr. I. Henry Harris, Jr., of Los Angeles, Calif., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Purex Corporation, 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. Respondent Purex Corporation, Ltd., is a corporation organized and existing under and by virtue of the laws of the State of California, with its factory and principal place of business located at 1001 East Sixty-second Street, in the city of Los Angeles, State of California. The respondent is now and for more than 2 years last past has been, engaged in the business of manufacturing, selling, and distributing a chemical preparation known as "Purex," intended for use as a germicide.

In the course and conduct of its business, respondent causes said preparation, when sold, 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. The 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 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 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, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

* * * It is a most powerful germicide * * *

BATHING: Livestock, Small Animals and Pests. Use 2 tablespoons PUREX to each gallon of wash water. This will aid in disinfecting any surface cuts or sores and will materially aid in preventing the spread of contagious diseases.

EQUIPMENT SANITATION: (Such as Milkcans, Milking Equipment, Feed Pans, Troughs, Etc.) After thoroughly washing and cleaning equipment, spray or soak with a disinfecting bath made by using two tablespoons PUREX to each gallon of water.

PAR. 3. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set forth herein, the respondent represents, directly or by implication, that its preparation Purex possesses such powerful germicidal properties that a solution made by adding two tablespoons of the preparation to a gallon of water will, when applied externally to livestock and other animals, destroy bacteria and disinfect any surface cuts or sores; that such solution will prevent the spread of bacteria and will destroy bacteria on metal or wood equipment.

PAR. 4. The foregoing representations are grossly exaggerated, false and misleading. While respondent's preparation possesses germicidal properties, the solution in question is wholly ineffective. Such solution will not destroy bacteria and will not disinfect surface cuts or sores. It will not prevent the spread of bacteria nor will it destroy bacteria on metal or wood or any other kind of equipment. In truth and in fact, in order for a solution of respondent's preparation to constitute a competent and effective germicide or disinfectant, such solution would have to contain at least 10 percent of respondent's preparation in its undiluted form.

PAR. 5. The use by the respondent of the foregoing false 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 into the purchase of substantial quantities of respondent's product.

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 29th day of March 1940, issued, and subsequently served, its complaint in this proceeding upon the respondent, Purex Corporation, Ltd., 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 15, 1940, the respondent filed its answer in this proceeding. 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 Robert Mathis, Jr., for the Commission, and in opposition to the allegations of the complaint by I. Henry Harris, Jr., for the respondent, before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, respondent having expressly waived the filing of briefs, and oral argument not having been requested, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Purex Corporation, Ltd., is a corporation organized and existing under and by virtue of the laws of the State of California, with its factory and principal place of business located at 9300 Rayo Avenue, in the city of Southgate, State of California. The respondent is now, and for more than 2 years last past has been, engaged in the business of manufacturing, selling and distributing a chemical preparation known as "Purex," intended for use as a germicide.

In the course and conduct of its business, respondent causes said preparation, when sold, 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.

The respondent maintains and for more than two years last past has maintained a course of trade in said preparation in commerce among and between the various States of the United States.

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 and statements 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 respondent's product. 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 statements and representations contained in said 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:

* * * It is a most powerful germicide * * *.

BATHING: Livestock, Small Animals and Pets. Use 2 tablespoons PUREX to each gallon of wash water. This will aid in disinfecting any surface cuts or sores and will materially aid in preventing the spread of contagious diseases.

EQUIPMENT SANITATION: (Such as Milk-cans, Milking Equipment, Feed Pans, Troughs, Etc.) After thoroughly washing and cleaning equipment, spray or soak with a disinfecting bath made by using two tablespoons PUREX to each gallon of water.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set forth herein, the respondent represents, directly or by implication, that its preparation "Purex" possesses such powerful, germicidal qualities that a solution made by adding two tablespoons of the preparation to a gallon of water will, when applied externally to livestock and other animals, destroy all bacteria and disinfect any surface cuts or sores; and that such solution will prevent the spread of, and will destroy, all bacteria on metal or wood equipment.

PAR. 4. The Commission finds that while a solution containing Purex in the strength recommended by respondent possesses disinfectant and gerimicidal properties, it is not effective for all purposes and will not destroy all bacteria or absolutely disinfect surface cuts and sores. Respondent's preparation, when used in the solution recommended and as directed, will not prevent the spread of all bacteria, nor will it destroy all bacteria on metal or wood or any other kind of

equipment. The degree of effectiveness of respondent's preparation when used as a disinfectant or antiseptic, is dependent upon the concentration of the solution used, the cleanliness of the surface treated and the length of time of exposure. In order for a solution of respondent's preparation to constitute a competent and effective germicide or disinfectant in the treatment of surface cuts and sores in accordance with the accepted medical practice, such solution would have to contain at least ten percent, by volume, of respondent's preparation in its undiluted form.

PAR. 5. The Commission further finds that while respondent's directions for diluting its product to make what is called a "disinfectant bath" may constitute an acceptable scientific use of the term "disinfectant," such use of said term is misleading to the purchasing public in that it causes the public to believe that such diluted solution is an absolute chemical disinfectant or germicide capable of killing all bacterial life. The statement "It is a most powerful germicide" is also misleading in that it causes a portion of the purchasing public to believe that respondent's product possesses stronger germicidal properties when used in the solution recommended and as directed than is actually the case.

PAR. 6. The use by the respondent of the foregoing misleading statements and representations disseminated as herein set forth 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 into the purchase of a substantial quantity of respondent's product designated as "Purex."

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 William C. Reeves, an examiner of the Commission theretofore designated by it, in support of the allegations of said complaint, and in opposition thereto, respondent having waived the filing of briefs, 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, Purex Corporation, Ltd., 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 product designated as "Purex," or any product of substantially similar composition 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 advertisement represents, directly or through inference:

(*a*) That a solution containing any amount less than 10 percent of respondent's preparation is a competent or effective germicide for the treatment of surface cuts or sores.

(*b*) That a solution of respondent's preparation containing two tablespoonfuls of such preparation to each gallon of water used is a competent or effective disinfectant or "disinfecting bath" for use on metal or wood surfaces, except in those cases where such surfaces have been previously cleaned and thoroughly washed.

(*c*) That a solution containing two tablespoonfuls of respondent's preparation to one gallon of water is capable of killing all forms of bacterial life.

(*d*) That respondent's preparation possesses any disinfectant or germicidal or antiseptic properties in excess of such properties as it actually possesses.

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.

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

GROUP 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 2922. Complaint, Sept. 17, 1936—Decision, Jan. 14, 1941

Where a corporation engaged, as jobber or wholesaler, in interstate sale and distribution of silk and rayon piece goods, in competition with others engaged in sale and distribution in commerce of similar products, and including many who do not in any way misrepresent the quality, character or origin thereof—

Represented that the piece goods sold by it consisted entirely of "name goods," or materials of generally recognized merit and quality, made and nationally advertised by manufacturing establishments of wide and favorable reputation, and that such goods were purchased or obtained by it direct from manufacturers thereof, and were composed entirely of new, wanted, up-to-date, stylish and seasonable fabrics, through such statements, in circulars distributed among its retail customers and prospective customers in the various States, and advertisements of its said products, as "HOLD A NAME SALE AND GET THE BENEFIT OF MILLIONS OF DOLLARS WORTH OF NATIONAL ADVERTISING!," "EVERY WOMAN KNOWS THESE FAMOUS MAKERS," followed by names of 10 manufacturers who were widely and favorably known among the retail trade and buying public, along with statement "and many other equally well known—SILKS AND ACETATES," "We will ship you a GROUP of 1,000 YARDS of High-type, New, Stylish, Wanted SILKS and ACETATES * * *. Consisting of many of the above Nationally Advertised Qualities * * *," "* * * We buy surplus stocks, sample pieces and short warps from mills, commission houses and dress manufacturers. * * *," "We * * * get the most up-to-date, stylish, perfect fabrics * * *," and "Only New, Wanted, Stylish Merchandise," etc.;

Facts being products thus advertised by it did not consist wholly of materials of generally recognized merit and quality, made and nationally advertised by manufacturing establishments of wide and favorable reputation, substantial part thereof, on the contrary, consisted of materials having no recognized merit or quality and made by manufacturers who did not have such a reputation, most of its said merchandise was not purchased direct from manufacturer, but purchased or obtained from commission merchants, dress manufacturers, garment makers and jobbers, the "Acetates" were in fact rayon fabrics, and substantial part of merchandise advertised and sold by it was not new, wanted, up-to-date, stylish or seasonable, but substantial portion thereof, on the contrary, consisted of discontinued numbers and odd lots and merchandise of second or inferior grade;

With tendency and capacity, through such false and misleading statements and representations in designating or describing its said merchandise, to mislead substantial number of retail merchants into erroneous belief that such representations were true, and with result, as direct consequence of such belief, induced as above set forth, that number of retail dealers purchased

substantial volume of silk and rayon piece goods sold by it, and that trade was diverted unfairly to it from its competitors, who truthfully advertise and represent the quality, character and origin of their products; to the substantial injury of competition in commerce:

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

Before *Mr. Miles J. Furnas*, *Mr. John J. Keenan*, and *Mr. Robert S. Hall*, trial examiners.

Mr. Morton Nesmith for the Commission.

Bangser & Kaufmann, 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 Group Sales Corporation, 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 the Commission that a proceeding by 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, Group Sales Corporation, a corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located in the city of New York, in the State of New York. It is now, and for more than 1 year last past has been, engaged in business as a jobber or wholesaler in the sale and distribution of silk and rayon piece goods, in interstate commerce. It causes its said products, when sold, to be shipped and distributed from its place of business in the city and State of New York to the purchasers thereof located in divers of the other States of the United States of America, and the District of Columbia. In the course and conduct of its business, said respondent, Group Sales Corporation, is, and has been at all times herein referred to, in competition with other corporations, individuals, firms and partnerships likewise engaged in the sale and distribution in interstate commerce of like and similar products to those of the respondent above mentioned and set-out.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, the respondent, Group Sales Corporation, heretofore purchased, and still purchases, from various sources supplies of silk and rayon piece goods, only a portion of which was "name goods," i. e., materials of generally recognized merit and quality, made and

nationally advertised by manufacturing concerns of wide and well established reputation, well and favorably known to the trade and purchasing public.

In soliciting the sale of its products in interstate commerce, the respondent, Group Sales Corporation, distributed, and still distributes, among its retail customers and prospective customers located in various States, certain circulars bearing the following caption:

HOLD A NAME SALE
AND GET THE BENEFIT OF MILLIONS OF
DOLLARS WORTH OF NATIONAL ADVERTISING!

and said circulars contained also the following:

EVERY WOMAN KNOWS THESE FAMOUS
MAKERS.

Thereafter the following well known names of manufacturers who enjoy wide and favorable reputations among the retail trade and the buying public, were listed and set-out in said circulars, to wit:

H. R. Mallinson
Cheney Bros.
Belding
Schwarsenbach
Susquehanna
C. K. Eagle
Bloomsburg
Stehli
Julliards
Duplan

said names of manufacturers, above set-out, being followed in said circulars by the following:

and many other equally well known
SILKS AND ACETATES.

In another certain circular of respondent which it distributed in interstate commerce among the retail dealers in the several States of the United States of America, the respondent made the following offer and inducement to the retail trade, to wit:

We will ship you a GROUP of 1,000 YARDS of High-type, New, Stylish, Wanted SILKS and ACETATES * * * Consisting of many of the above Nationally Advertised Qualities * * *

In still another circular of respondent distributed in interstate commerce, it was stated:

You surely would be interested if you could buy beautiful silks and acetates at a fraction of their regular prices. HERE'S WHY—We buy surplus stocks, sample pieces and short warps from mills, commission houses and dress manu-

facturers. We are, at all times, ready to lay out large sums of spot cash and in that way we buy at ridiculous prices. These Bargains We Pass On to You.

And in other circulars so distributed by the respondent in interstate commerce as aforesaid, the following statement is made:

We take advantage of weaknesses in the market and get the most up-to-date, stylish, perfect fabrics at a fraction of their wholesale prices. THESE BARGAINS WE PASS ON TO YOU.

In the conduct of its said business the said respondent, Group Sales Corporation, advertised, sold and offered for sale in interstate commerce, its said products by means of the following inducements and representations:

Only New, Wanted Stylish Merchandise;
All New, This Season's Fabrics;
Latest Wanted Fabrics;
Perfect—New—Stylish Silks and Acetates;

and concerning its said products the respondent made and makes the following statements:

All Our Merchandise is Guaranteed Perfect—New—Up-To-The-Minute, Wanted Fabrics.

All of said statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of the products sold by the respondent. In all of its advertising literature, respondent represents, through the statements and representations herein set-out and other statements of similar import and effect, that the silk and rayon piece goods sold by it are composed entirely of so-called "name goods" and consist of materials of generally recognized merit and quality made and nationally advertised by manufacturing establishments of wide and favorable reputation, well and favorably known to the trade and purchasing public; that said silk and rayon piece goods were purchased or obtained direct from the manufacturer or manufacturers of said merchandise and that said piece goods are composed entirely of new, wanted, up-to-the-minute or up-to-date, stylish, seasonable fabrics.

PAR. 3. In truth and in fact said products so advertised, sold and offered for sale by respondent in interstate commerce did not consist wholly of so-called "name goods," did not consist of material of generally recognized merit and quality, made and nationally advertised by manufacturing establishments of wide and favorable reputation, well and favorably known to the trade and purchasing public, but to the contrary, a substantial part of the merchandise of respondent, so represented, sold, offered for sale and advertised in interstate commerce consisted in merchandise other than "name goods," and in like

manner a substantial portion of said merchandise was not purchased or otherwise obtained by the said respondent direct from the manufacturer or manufacturers thereof, but was obtained from other jobbers and garment makers who did not manufacture said products so advertised, represented, sold and offered for sale in interstate commerce by respondent. In like manner a substantial part of the merchandise so advertised, represented, sold and offered for sale by respondent in interstate commerce, was not truthfully and properly described, when said merchandise was represented or referred to as being composed only of new, wanted, up-to-the-minute or up-to-date, stylish, seasonable fabrics. In truth and in fact, a substantial part of such merchandise was "seconds" or "left-overs" from garment manufacturers' goods.

PAR. 4. There are among respondent's competitors many who do a wholesale and jobbing business in silk and rayon piece goods who do not, in any way, misrepresent the quality or character of their respective products but who properly and truthfully advertise and represent the character and nature of the merchandise which they sell.

PAR 5. Each and all of the false and misleading statements and representations made by the respondent in designating or describing its merchandise, in offering for sale and selling said merchandise, were, and are, calculated to, and had, and now have, a tendency and capacity to mislead a portion of the retail merchants who buy respondent's piece goods into the erroneous belief that all of said representations are true. As a direct consequence of the mistaken and erroneous beliefs, induced as hereinabove set out, a number of retail dealers have purchased a substantial volume of the silk and rayon piece goods sold by the respondent with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of wholesaling and jobbing silk and rayon piece goods who truthfully advertise and represent the quality, character and nature of their products. As a result thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the States of the United States.

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

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 17, 1936, issued and subsequently served its complaint in this proceeding upon the respondent, Group Sales 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 said complaint were introduced by Morton Nesmith, attorney for the Commission, and in opposition to the allegations of the complaint by Adolph Bangser, attorney for the respondent, before examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1: The respondent, Group Sales Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located in the city of New York, in the State of New York. It is now, and for more than 5 years last past has been, engaged in business as a jobber or wholesaler in the sale and distribution of silk and rayon piece goods. It causes its said products, when sold, to be shipped and transported from its place of business in the city and State of New York to the purchasers thereof located in various other States of the United States of America, 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.

In the course and conduct of its business, said respondent, Group Sales Corporation, is, and has been at all times herein referred to, in competition with other corporations, and with 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 products similar to those of the respondent.

Par. 2. In the course and conduct of its business as aforesaid,

and for the purpose of inducing the purchase of its products, the respondent has distributed, and still distributes, among its retail customers and prospective customers located in various States, certain circulars bearing the following caption:

HOLD A NAME SALE
AND GET THE BENEFIT OF MILLIONS OF
DOLLARS WORTH OF NATIONAL ADVERTISING!

and said circulars contained also the following:

EVERY WOMAN KNOWS THESE FAMOUS MAKERS.

Thereafter the following well-known names of manufacturers who enjoy wide and favorable reputations among the retail trade and the buying public, were listed and set out in said circulars, to-wit:

H. R. Mallinson,
Cheney Bros.,
Belding,
Schwarsenbach,
Susquehanna,
C. K. Eagle,
Bloomsburg,
Stehli,
Julliards,
Duplan,

such names being followed in said circulars by the following:

and many other equally well known
—SILKS AND ACETATES.

In another circular of respondent which it distributed among retail dealers the following appeared:

We will ship you a GROUP of 1,000 YARDS of High-type, New, Stylish, Wanted SILKS and ACETATES * * * Consisting of many of the above Nationally Advertised Qualities * * *

In still another circular of respondent it was stated:

You surely would be interested if you could buy beautiful silks and acetates at a fraction of their regular prices. HERE'S WHY—We buy surplus stocks, sample pieces and short warps from mills, commission houses and dress manufacturers. We are, at all times, ready to lay out large sums of spot cash and in that way be buy at ridiculous prices. These Bargains We Pass On to You.

And in other circulars so distributed by the respondent, the following statement is made:

We take advantage of weaknesses in the market and get the most up-to-date, stylish, perfect fabrics at a fraction of their wholesale prices. THESE BARGAINS WE PASS ON TO YOU.

In the conduct of its business the respondent also advertised its products by means of the following representations:

Only New, Wanted, Stylish Merchandise;
All New, This Season's Fabrics;
Latest Wanted Fabrics;
Perfect—New—Stylish Silks and Acetates;
All Our Merchandise is Guaranteed Perfect—New—Up-To-The-Minute, Wanted Fabrics.

All of said statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of the products sold by the respondent. Through the use of such statements and representations and other statements of similar import and effect, the respondent represents that the piece goods sold by it consist entirely of so-called "name goods", that is, materials of generally recognized merit and quality made and nationally advertised by manufacturing establishment of wide and favorable reputation; that said piece goods were purchased or obtained by respondent direct from the manufacturers of said merchandise, and that said piece goods are composed entirely of new, wanted, up-to-date, stylish, seasonable fabrics.

PAR. 3. The Commission finds that the products so advertised by the respondent did not consist wholly of materials of generally recognized merit and quality, made and nationally advertised by manufacturing establishments of wide and favorable reputation. On the contrary, a substantial part of such merchandise consisted of materials having no recognized merit or quality and made by manufacturers who do not have a wide or favorable reputation. Most of respondent's merchandise was not purchased direct from the manufacturer thereof but was purchased or obtained from commission merchants, dress manufacturers, garment makers and jobbers. The fabrics advertised and described by use of the term "acetates" were in fact rayon fabrics.

The Commission further finds that a substantial part of the merchandise advertised and sold by the respondent was not new, wanted, up-to-date, stylish or seasonable merchandise. On the contrary, a substantial portion of respondent's merchandise consisted of discontinued numbers and odd lots, and merchandise of second or inferior grade.

PAR. 4. The Commission further finds that many of respondent's competitors herein referred to do not in any way misrepresent the quality, character or origin of their products.

PAR. 5. The Commission further finds that each and all of the false and misleading statements and representations, as set out herein, made

by the respondent in designating or describing its merchandise, were, and are, calculated to, and had, and now have, a tendency and capacity to mislead a substantial number of retail merchants into the erroneous belief that said representations are true. As a direct consequence of such mistaken and erroneous belief, induced as hereinabove set out, a number of retail dealers have purchased a substantial volume of the silk and rayon piece goods sold by the respondent, with the result that trade has been unfairly diverted to the respondent from its competitors who truthfully advertise and represent the quality, character, and origin of their products. As a result thereof, substantial injury has been done and is being done by respondent to competition in commerce among and between the 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 examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief filed by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Group Sales Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of silks and rayons, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

1. Representing, or aiding retailers in representing, through the device of so-called "name-sales" of groups of piece goods, or through any other means or device, or in any manner, that groups of its silk and rayon piece goods constitute "name-goods" unless all, or the majority, of such piece goods included in such groups were actually produced and widely advertised by a nationally known manufacturer, and in

the event such groups include pieces not so advertised or produced, then disclosure of such fact must be made.

2. Representing as new, wanted, up-to-date, stylish or seasonable, any fabric which is not such in fact.

3. Representing that the quality, character or origin of any fabric is other than the actual quality, character, or origin of such fabric.

4. Representing that any product has been obtained by the respondent direct from the manufacturer of such product, when such product has not in fact been so obtained.

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

B. SOLOMON, TRADING AS APEX LAMP WORKS

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

Docket 3629. Complaint, Oct. 11, 1938—Decision, Jan. 15, 1941

Where an individual engaged in manufacture of her "Ampliflector" lamp shade or reflector, and in interstate sale and distribution thereof in substantial competition with others engaged in sale and distribution, in commerce as aforesaid, of similar products intended for use in connection with illumination, and including many who truthfully advertise and represent the merits and efficiency thereof; in advertising her said "Ampliflector" in newspapers and magazines of general circulation, and through booklets, folders, pamphlets, circular letters, and other forms of advertising literature distributed in part directly to members of purchasing public in the various States, and furnished in part to customers located throughout the United States for distribution among the purchasing public—

(*a*) Represented that said reflector was a new and amazing light discovery which cut light bills from 25 percent to 50 percent, and would pay for itself quickly out of actual savings, and that it constituted an advancement in the science of light reflectors and provided extreme concentration of light rays, with result that, attached to a small bulb, volume of illumination produced would be equal to that obtained with a larger one without the reflector, and with user saving difference between cost of smaller and larger bulb;

Facts being her said product was not an amazing discovery nor advancement in science concerned, as above claimed, but was similar in shape, design, size, and efficiency to reflectors of various shapes and sizes long sold and distributed in all the States, her reflector did not reduce lighting costs, but, like many others, was instrumental in directing and increasing light on a given working plane, and was merely adaptation of well-known principle of light diffusion, and, in matter of concentration of light rays, fell substantially short of that supplied, for example, by automobile and aviation headlights; and

(*b*) Represented that she had made tests which proved that intensity of electric light from bulbs was increased by some 30 to 600 candlepower through use of her said reflector, and that use of diamond design in reflecting surface of said product amplified light produced in the bulb by crisscrossing every ray in every direction, and that same bulb would furnish more light with her said product than it would with any competing reflector, and that her said product gave better quality of light by changing colors thereof and bringing out contrast of colors in any object;

Facts being use by her in aforesaid connection of light intensity tests table was misleading and deceptive in that Weston light meter does not measure, as represented by her, candlepower, fixed candlepower output of a bulb is not affected by use of her reflector or of any other, and bulb used with her product would furnish no more light than when used with any other similar type reflector or shade, and, as aforesaid indicated, light is not

inceased at the source by use of her, or other, reflector, whether larger or smaller lamp, at increased or decreased cost, as case may be, is employed, and while intensity of light on working plane is increased in foot candles through use of reflector, intensity thereof on opposite side is decreased, with candle power at source remaining same;

With effect, through use of such false and misleading statements and representations in circulars, pamphlets, and other advertising media employed by her in offer and sale of her said product in commerce, of misleading and deceiving substantial portion of purchasing public into erroneous belief that said representations were true, and, as consequence of such erroneous and mistaken beliefs, induced as above set forth, that substantial number of consuming public purchased her said product, and trade in commerce was thereby unfairly diverted to her from competitors; to their injury 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, and unfair and deceptive acts and practices therein.

Before *Mr. John P. Bramhall* and *Mr. William C. Reeves*, trial examiners.

Mr. R. A. McOuat for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that B. Solomon, trading under the name of Apex Lamp Works, 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. The respondent, B. Solomon, is an individual doing business as the Apex Lamp Works, with his [her] principal office and place of business located at 146–150 West Twenty-fifth Street, New York City. For more than 2 years last past respondent has been and still is engaged in the business of manufacturing for sale and selling a lamp shade or reflector under the trade name of "Ampliflector." Respondent causes his [her] said product, when sold, to be transported from his [her] aforesaid place of business in the State of New York to the purchasers thereof at their respective places of location in States of the United States other than the State of New York and in the District of Columbia. Respondent maintains, and during all the time herein mentioned has maintained, a course of trade in said product so sold by him [her] in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is, and at all times herein mentioned has been, in substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of similar products in commerce between and among the various States of the United States and in the District of Columbia. Among the competitors of respondent in said commerce are many who truthfully advertise and represent the efficacy and effect of their products.

PAR. 3. In the course of his [her] said business as hereinabove described, and for the purpose of inducing the purchase of his [her] product, respondent has made many statements concerning the efficacy and effect of his [her] product. Said statements are made by means of advertisements inserted in magazines and by means of statements and picturizations in pamphlets, testimonials, and letters, all circulated between and among the various States of the United States and in the District of Columbia. Among many, the following are typical examples of said advertisements:

NEW—AMAZING LIGHT DISCOVERY

Cuts Light Bills 25% to 50%

Ampliflectors needed in every store, factory, office. Halves electric bills or doubles light out-put.

Pays for itself quickly out of actual savings.

The Ampliflector represents the most advanced achievement in the science of light reflectors.

Permits use of smaller bulbs to obtain the same volume of light.

With Ampliflectors you use smaller bulbs, 15 watt instead of 40 watt, 25 watt instead of 50 watt * * *

LIGHT INTENSITY TESTS

These tests prove the high efficiency of AMPLIFLECTORS. * * *

Ampliflector Number	Bulb Size	Candlepower without Ampliflector	Candlepower with Ampliflector
*	*	*	*
*	*	*	*
10	300 Watt	150	900

The DIAMOND DESIGN in the mirror amplifies the light by criss-crossing every ray in every direction.

Gives a better quality of light by changing the average yellow to a brilliant white light.

Brings out the contrast in colors of any object.

Saves the difference between the cost of the smaller and larger bulbs.

All said statements, together with similar statements and picturizations appearing in respondent's advertising literature, but not set out herein, purport to be descriptive of respondent's product. Respondent represents, through the statements herein set out and

other statements of similar import and effect, that the "Ampliflector" is a new and amazing light discovery that cuts light bills 25 to 50 percent and pays for itself quickly out of actual savings; that it is needed in every store, factory, and office; that it is an advancement in the science of light reflectors; that when an "Ampliflector" is attached to an electric bulb a 15-watt bulb may be used instead of a 40-watt bulb to obtain the same volume of light as with the 40-watt bulb when used with any other type of reflector and that the user saves the difference between the cost of the smaller and larger bulb; that respondent has made tests which prove that the intensity of electric light from an electric light bulb is increased by from 30 to 600 candlepower; that the use of the diamond design in the mirror amplifies the light by criss-crossing every ray in every direction; that the same bulb will furnish more light with the "Ampliflector" than with any other reflector and that it gives a better quality of light by changing the colors and brings out the contrast in the colors of any object.

PAR. 4. The representations made by respondent with respect to the efficacy and effect of his [her] product are exaggerated, misleading, and false. In truth and in fact, respondent's product is neither new, amazing nor is it a discovery. It does not reduce light bills to any appreciable extent. It does not pay for itself out of savings. It does not provide extreme concentration of light rays. Light is not amplified by the design of the "Ampliflector." Light intensity is not measured by candlepower. Smaller bulbs do not produce any more light intensity with the "Ampliflector" than with other types of reflector. The "Ampliflector" does not give a better quality of light. The contrast in colors in any object is not brought out any better with the "Ampliflector" than with any other type of ampliflector unless a blue one is used. The "Ampliflector" merely concentrates and directs the light rays on a working plane in the same or similar manner as reflectors sold in competition with it. However, there are several brands of reflectors on the market that are more efficient as reflectors than "Ampliflectors." The foot-candle is the proper unit for measuring light intensity. The purported tests of the respondent are incorrectly reported.

PAR. 5. The exaggerated, misleading, and false representations used by respondent as set forth herein in connection with the sale of his [her] product have the capacity and tendency to and do mislead members of the purchasing public into a mistaken and erroneous belief that said representations are true. As a direct consequence of the exaggerated, misleading, and false representations of the respondent and the mistaken and erroneous belief induced thereby, the purchasing

public has purchased a substantial amount of respondent's product from him [her], with the result that trade in said commerce has been diverted unfairly to respondent from competitors engaged in the business of selling reflectors who truthfully advertise and represent the efficacy of their products. As a result thereof, injury has been done and is now being done by the respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of 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 October 11, 1938, issued and thereafter served its complaint in this proceeding upon the respondent, B. Solomon, charging her with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the said complaint were introducted by R. A. McOuat, attorney for the Commission, before John P. Bramhall and William C. Reeves, examiners of the Commission, theretofore duly designated by it. No testimony or other evidence was introduced or tendered by or on behalf of said respondent. The testimony and other evidence so taken 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 a brief and oral argument not having been requested); and the Commission having duly considered the matter and being now fully advised in the premises; finds that this matter is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, B. Solomon, is an individual trading and doing business under the name of Apex Lamp Works. For several years prior to the date of the issuance of the complaint herein, respond-

ent's place of business was located at 146 West Twenty-fifth Street in the city of New York, State of New York. For more than 2 years prior to the date of the issuance of the complaint, respondent was engaged in the manufacture, sale, and distribution of a lamp shade or reflector under the trade name of "Ampliflector." Respondent caused said product, when sold, to be transported from respondent's place of business in the State of New York to purchasers located in the States of Illinois, Pennsylvania, Wisconsin, New Jersey, Massachusetts, and in various States of the United States and in the District of Columbia. Respondent during said time 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. 2. In the course and conduct of business as aforesaid, and during the times above mentioned, respondent was in substantial competition with other individuals and with firms, partnerships, 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 similar products intended for use in connection with illumination. There are among the competitors of the respondent in said commerce many who truthfully advertise and represent the merits and efficiency of their products.

PAR. 3. In the course of the operation of said business as hereinabove described, and for the purpose of inducing individuals, firms, and corporations to purchase respondent's said reflectors, the respondent has made many statements and representations concerning the merits and efficiency of said product. Said statements and representations have been made in advertisements inserted in newspapers and magazines having general circulation throughout the various States of the United States. Respondent has also made use of booklets, folders, pamphlets, circular letters, and other forms of advertising literature containing said statements and representations, some of which respondent directly distributes to members of the purchasing public located in various States of the United States and some of which respondent furnishes to customers located throughout the United States for distribution among the purchasing public. In said advertisements respondent has made many statements concerning the effectiveness of the said reflector in increasing illumination and in effecting savings to consumers of electric light. Among and typical of the representations so made are the following:

NEW—AMAZING LIGHT DISCOVERY

Cuts Light Bills 25% to 50%

Ampliflectors needed in every store, factory, office. Halves electric bills or doubles light out-put.

Pays for itself quickly out of actual savings.

The Ampliflector represents the most advanced achievement in the science of light reflectors.

Permits use of smaller bulbs to obtain the same volume of light.

With Ampliflectors you use smaller bulbs, 15 watt instead of 40 watt, 25 watt instead of 50 watt * * *

The improved light given by the new equipment is very apparent to the eye—you get as much or more light with the smaller bulbs. Undeniable proof can be given with the use of a light meter.

We can furnish Weston foot-candle meters which give an exact reading of light intensity.

* * * * * * *

Offices and Indoor Store Lighting—You can install the #5 Ampliflector inside of most existing lighting fixtures with the same bulb to obtain 25% more light; or you can use the #5 Ampliflector in those fixtures with the next smaller size bulb and obtain as much light as with the larger bulb. * * *

* * * * * * *

Smaller bulbs can be used to give the same amount of light.

* * * * * * *

Beware of Imported Imitations— * * * They are made of inferior materials and do not have the same efficiency, nor do they give any length of service.

* * * * * * *

LIGHT INTENSITY TESTS

These tests prove the high efficiency of AMPLIFLECTORS. Using a Weston Light Meter and Edison Mazda bulbs, the following readings were taken at 30 inches under the bulb. The readings at other distances would be relatively the same:

Ampliflector number	Bulb size	Candlepower without ampliflector	Candlepower with ampliflector
	Watt		
5	25	3	33
5	40	7	80
6	60	16	125
6	75	21	150
7	75	21	180
7	100	32	220
8	100	32	300
8	150	60	480
9	150	60	550
9	200	100	650
10	300	150	900

The DIAMOND DESIGN in the mirror amplifies the light by criss-crossing every ray in every direction.

Gives a better quality of light by changing the average yellow to a brilliant white light.

Brings out the contrast in colors of any object.

Saves the difference between the cost of the smaller and larger bulbs.

All of such statements, together with many other similar statements appearing in respondent's advertising literature purport to be descriptive of respondent's product and its effectiveness in use. In all of respondent's advertising literature respondent has represented that said reflector is a new and amazing light discovery which cuts light bills from 25 percent to 50 percent and which will pay for itself quickly out of actual savings; that said reflector is an advancement in the science of light reflectors, and provides an extreme concentration of light rays; that when said reflector is attached to a small electric light bulb the volume of illumination produced is equal to that which would be obtained through the use of a larger bulb without the reflector, and that the user saves the difference between the cost of the smaller and the larger bulb; that the respondent has made tests which prove that the intensity of electric light from electric bulbs is increased by from thirty to six hundred candlepower through the use of said reflector; that the use of the diamond design in the reflecting surface of said product amplifies the light produced in the bulb by criss-crossing every ray in every direction, and that the same bulb will furnish more light with respondent's said reflector than it will furnish when equipped with any competing reflector, and that respondent's said reflector gives a better quality of light by changing the color of the light and bringing out the contrast of colors in any object.

Respondent discontinued such advertising representations in June of 1938 but continued selling said reflector until in June of 1939. Practically all of the orders received by respondent for the said reflector were received through the mails in response to advertisements and advertising literature containing the representations hereinabove set-out.

PAR. 4. Respondent's reflector is designed for use in connection with electric light bulbs and has a concave reflecting mirror of either blue or silver colored glass. For many years reflectors of various shapes and sizes have been sold and distributed in all the States of the United States, many of which are similar in shape, design, size, and efficiency to respondent's said reflector.

Respondent's said reflector does not reduce lighting costs. Like many other reflectors, it is instrumental in directing and increasing light on a given working plane, thus making it possible to obtain as much light on a working surface with a small bulb and a reflector as can be obtained on the same plane with a larger bulb without a reflector. Respondent's said reflector is merely an adaptation of

a well known principle of light diffusion and it is not a new and amazing light discovery nor is it an advancement in the science of light reflectors. A bulb will furnish no more light when used with respondent's said reflector than it will when used with any other similar type reflector or shade. Respondent's representation that said reflector furnishes an extreme concentration of light rays is misleading and deceptive for the reason that the concentration of light rays produced by respondent's reflector is within an angle of from 30° to 50°, while extreme concentration of light rays such as that provided in automobile head lights and aviation lights provides for a concentration of approximately 7° with the primary concentration within an angle of 2°. The use by the respondent of "Light Intensity Tests" table set-out in paragraph 3 hereof is misleading and deceptive for the reason that the Weston light meter is an instrument used for measuring the intensity of light in foot-candles at a chosen distance from the light. It does not measure candlepower as represented by respondent. The foot-candles reported on a Weston light meter necessarily differ as the meter is moved with reference to the source of light. Candlepower output of a bulb is measured in foot-candles. A foot-candle is the amount of light given by one candle at a distance of 1 foot. The fixed candle-power output of a bulb is not affected by the use of respondent's or any other reflector.

If a 50-watt lamp or any sized lamp is replaced by a 25-watt lamp or a lamp half the size of that originally taken, the cost of operation would be proportionately less but the amount of light is also proportionately less, if no reflector is used in either case. In the event that a reflector is used under the aforesaid conditions, the intensity of the light on the working plane is increased in foot-candles, but the intensity of light is decreased on the opposite side of the reflector from the working plane. The candle power of the light at the source in such case remains the same.

PAR. 5. The use by the respondent of the false and misleading statements and representations in circulars, pamphlets and other advertising media employed by respondent in offering for sale and selling said product in commerce, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a result of such erroneous and mistaken beliefs, induced by the acts and representations of the respondent as hereinbefore enumerated, a substantial number of the consuming public have purchased respondent's product, with the result that trade in commerce among and between the various States of the United States and in the

District of Columbia has been unfairly diverted to the respondent from competitors to their injury and to the injury of the public.

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 P. Bramhall and William C. Reeves, examiners of the Commission theretofore duly designated by it in support of the allegations of said complaint (respondent not having presented any testimony or other evidence in opposition to the allegations of the complaint), and brief on behalf of the Commission filed herein (respondent not having filed brief or requested oral argument) and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, B. Solomon, trading as the Apex Lamp Works, or trading under any other trade name, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of reflectors for electric light bulbs, now known as and sold under the name "Ampliflector," or any other similar product 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:

1. That respondent's product is a new and amazing light discovery that cuts light bills substantially, pays for itself quickly out of actual savings, or effects economies in the use of electric current which will not result from the use of other reflectors.

2. That respondent's product is an advancement in the science of light reflectors; that the volume of light at the source is increased through the use of said product with any lamp or bulb; or that the attachment of said product to a small bulb produces illumination equal to that obtained by the use of a larger bulb with other reflectors.

3. That tests have been made which prove that the use of said reflector increases the intensity of light from an electric light bulb to a greater degree than it can be increased through the use of other reflectors.

4. That the use of a diamond shaped design in the reflecting surface of respondent's reflector amplifies the light in the bulb.

5. That said reflector provides extreme concentration of light rays.

6. That said reflector increases the candle power of an electric bulb.

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

U. S. AIR SEAL, INC.

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

Docket 4187. Complaint, July 13, 1940—Decision, Jan. 15, 1941

Where a corporation engaged in manufacture of its "Air Seal" automobile accessory compound to prevent tire blow-outs, and in interstate sale thereof, in statements with reference thereto, through pamphlets and circular advertising and otherwise—

(*a*) Represented that use of its said product would cause tires to be immune to and safe from blow-outs, and would control blown-out tire by retaining enough air in tube for safe stopping, through such statements as "Not one manufacturer has produced a blow-out proof tire, but all makes of tires are immediately made safe by Air Sealing from this danger," and "Air Seal will absolutely control a blown-out tire by retaining enough air after a blow-out to allow you to come to a straight-a-head, safe stop—sometimes even permitting you to go on to a service station for repairs," and through invitation, as a test, to "DRIVE A NAIL IN AN AIR-SEALED TIRE" and depiction of nail being driven into tire, facts being such product would not cause tires to be immune and safe from such happenings or prevent blow-outs caused by large holes, tube punctures or broken beads, and would not control a blown-out tire by retaining enough air for safe stopping or otherwise; and

(*b*) Represented, as aforesaid, that use of its said "Air Seal" would eliminate friction and extend life of tube, and preserve rubber, and that such "Air Seal" was superior to similar products used to prevent escape of air from tubes, and that use thereof produced a 25 percent increase in tire mileage, through such statements as "* * * unlike most other products which are designed for blow-out control and puncture proofing, does not engender friction (heat), thus, it eliminates the primary cause of blow-outs," and "Air Sealed tubes will outlast two or three casings," and "* * * preserves the rubber," and "Regardless of the number of tire miles you are now getting, Air Seal will positively give you 25 percent or more," facts being it would not eliminate friction, extend life of tube, give 25 percent or any appreciable increased tire mileage nor accomplish other results claimed for it as above set forth, and was not superior in such particulars to similar products used to prevent escape of air from tubes;

With effect, through use of such false, deceptive, and misleading statements, representations and claims, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations and claims were true, and of causing substantial portion of purchasing public, because of such erroneous and mistaken 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 of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. Jesse D. Kash for the Commission.

Mr. Paul Z. Hodge, of Warren, 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 U. S. Air Seal, 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 would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, U. S. Air Seal, Inc., is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its principal place of business located at Broadway and High Streets, Girard, Ohio.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the manufacture and sale of an automobile accessory compound designed to prevent blow-outs in tires, known and designated as "Air Seal." Respondent causes its product, when sold by it, to be transported from its aforesaid place of business in the State of Ohio to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said automobile accessory compound "Air Seal" 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 and for the purpose of inducing the purchase of its said product, respondent, by means of advertising in pamphlets and circulars and by other means, has made, and is now making, false statements and representations regarding the efficacy and effect of its product, and the results that are achieved by its use.

Among and typical of the false statements and representations contained in said advertisements, so used and disseminated as aforesaid, are the following:

Not one manufacturer has produced a blow-out proof tire, but all makes of tires are immediately made safe by Air Sealing from this danger.

Air Seal will absolutely control a blown-out tire by retaining enough air after a blow-out to allow you to come to a straight-a-head, safe stop—sometimes even permitting you to go on to a service station for repairs.

Air Seal, unlike most other products which are designed for blow-out control and puncture proofing, does not engender friction (heat), thus, it eliminates the primary cause of blow-outs.

Air Sealed tubes will outlast two or three casings.

Air Seal preserves the rubber.

Make this test—drive a nail into your tire and after removing it you will discover not one pound of air has escaped. Do you know of any other tire or tube that will withstand this torture.

DRIVE
A NAIL IN AN
AIR-SEALED
TIRE.

Picture of nail being driven into tire.

Regardless of the number of tire miles you are now getting, Air Seal will positively give you 25% or more.

PAR. 4. The foregoing statements and representations are grossly exaggerated, misleading, and untrue. In truth and in fact, respondent's said product will not cause tires to be immune and safe from blow-outs, or prevent blow-outs caused by large holes, tube punctures, or broken beads; it will not control a blow-out tire by retaining enough air for safe stopping or otherwise; it will not eliminate friction; it will not extend the life of the tube; it will not preserve rubber; it is not superior to similar products used to prevent the escape of air from tubes; and it will not give 25 percent or any appreciable increased tire mileage.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and claims with respect to its 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 to cause, and it has caused, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 13, 1940, issued and served its complaint in this proceeding upon respondent U. S. Air Seal, Inc., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 4, 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 U. S. Air Seal, Inc., is a corporation organized and doing business under the laws of the State of Ohio, with its principal place of business formerly located at Broadway and High Street, Girard, Ohio, but now located at 33 Cherry Street, Niles, Ohio.

PAR. 2. The respondent is now and for more than 1 year last past has been engaged in the manufacture and sale of an automobile accessory compound designed to prevent blow-outs in tires, known and designated as "Air Seal." Respondent causes its product, when sold by it, to be transported from its aforesaid place of business in the State of Ohio to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said automobile accessory compound "Air Seal" 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 and for the purpose of inducing the purchase of its said product, respondent, by means of advertising in pamphlets and circulars and by other means, has made, and is now making, false statements and representations regarding the efficacy and effect of its product, and the results that are achieved by its use.

Among and typical of the false statements and representations contained in said advertisements, so used and disseminated as aforesaid, are the following:

Not one manufacturer has produced a blow-out proof tire, but all makes of tires are immediately made safe by Air Sealing from this danger.

Air Seal will absolutely control a blown-out tire by retaining enough air after a blow-out to allow you to come to a straight-a-head, safe stop—sometimes even permitting you to go on to a service station for repairs.

Air Seal, unlike most other products which are designed for blow-out control and puncture proofing, does not engender friction (heat), thus, it eliminates the primary cause of blow-outs.

Air Sealed tubes will outlast two or three casings.

Air Seal preserves the rubber.

Make this test—drive a nail into your tire and after removing it you will discover not one pound of air has escaped. Do you know of any other tire or tube that will withstand this torture.

DRIVE
A NAIL IN AN
AIR-SEALED
TIRE

Picture of nail being driven into tire.

Regardless of the number of tire miles you are now getting, Air Seal will positively give you 25% or more.

PAR. 4. The foregoing statements and representations are grossly exaggerated, misleading, and untrue. In truth and in fact, respondent's said product will not cause tires to be immune and safe from blow-outs, or prevent blow-outs caused by large holes, tube punctures, or broken beads; it will not control a blown-out tire by retaining enough air for safe stopping or otherwise; it will not eliminate friction; it will not extend the life of the tube; it will not preserve rubber; it is not superior in these particulars to similar products used to prevent the escape of air from tubes; and it will not give 25 percent or any appreciable increased tire mileage.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and claims with respect to its 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 to cause, and it has caused, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

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 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, U. S. Air Seal, 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 for use in inner tubes of its product designated "Air Seal," or any other product of substantially the same composition, whether sold under the name "Air Seal" or some other name, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That the use of its product will cause tires to be immune to, or safe from, blow-outs or prevent blow-outs caused by large holes, tube punctures, or broken beads.

2. That the use of its product will control a blown-out tire by retaining enough air in the tube for safe stopping.

3. That its use will eliminate friction, extend the life of the tube, or preserve rubber, or that said product is superior to similar products used to prevent the escape of air from tubes; or

4. That its use produces a 25 percent, or any other appreciable, increase in tire mileage.

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

NATIONAL PROPRIETARIES, INC.

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

Docket 4271. Complaint, Aug. 27, 1940—Decision, Jan. 15, 1941

Where a corporation engaged in sale and distribution of its "Nuga-Tone" to purchasers in various States; 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, circulars and other advertising literature, and which were intended and likely to induce purchase of its said product—

(*a*) Represented, directly and by implication, that its said "Nuga-Tone" possessed substantial therapeutic value in treatment of nervous disorders, facts being it possessed no such value and was not a safe and harmless preparation, in that it contained drugs Corrosive Sublimate, Strychnine Sulphate, Arsenic Trioxide, Reduced Iron, Extract Gentian, Extract Cascara Sagrada, Extract Taraxacum and Zinc Phosphide in quantities sufficient to produce serious and irreparable injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary and usual, and use thereof might result in chronic poisoning which may be recognized by renal irritations, nervous irritability, neuritis, psychoses, nutritional disturbances leading to cachexia, muscular atrophy, decalcification of the bones, and anemia; and

(*b*) Failed to reveal in said advertisements facts material in light of such representations, and that use of said product, 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 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 "Nuga-Tone" was a valuable medicine for treatment of nervous disorders, and to induce, 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. William L. Taggart for the Commission.

Newby, Simmons & Cessna, 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 National Proprie-

taries, 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. National Proprietaries, Inc., is a corporation organized, existing and doing business under the laws of the State of Illinois, with its office and principal place of business located at 767 North Milwaukee Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for some time past has been, engaged in the sale and distribution of a drug preparation advertised as "Nuga-Tone." Respondent has caused said preparation, when sold, to be transported from its place of business in the State of Illinois 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 and the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said preparations, by United States mails, 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 preparation, and respondent has also disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparation by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive 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 by circulars, and other advertising literature, are the following:

WIECEJ ENERGII DLA NERWOWYCH, PRZEMECZONYCH MEZCZYZN I KOBIET

NUGA-TONE zawiera duzo Zinc Phosphide, wartosciowego skladnika dostarczajacego fosforu, tak potrzebnego do silnych, mocnych nerwow. Lekarstwo zawierajace fosfor jest przepisywane przez lekarzy w celu uspokojenia i uleczenia rozdraznionych, niespokojnych bolacych nerwow. Jest to pomocne lekarstwo, gdy stan nerwowy powdouje ciagle uczucie przemeczenia i brak wypoczynku.

Ten doskonaly preparat takze zawiera te forme zelaza, ktora przyczynia sie do budawania bogartej, czerwonej krwi, do budowania silniejszych, zdrowszych muskulow i do pryzwracania koloru i zdrowego wygladu chudym, bladym twarzom, jesli powodem tego jest anemia. Pozatym Nuga-Tone zawiera inne cenne lecznicze skladniki Zacznij uzywac NUGA-TONE dzisiaj i zauwaz jak twoja krew i nerwy odzyja. Sprzedawane we wszystkich aptekach po cenie Jednego Dolara za jednomiesieczny okres leczenia. Pieniadze zostana zwrocone jesli nie bedziecie zuplnie zadoweleni.

Na zatwardzenie uzyj—UGA-SOL—Idealny srodek rozwalniajacy. 25¢ i 50¢.

The English translation of the above statement is as follows:

MORE PEP FOR NERVOUS, RUN-DOWN MEN AND WOMEN

NUGA-TONE is rich in Zinc Phosphide, the precious compound supplying an available phosphorus, the element so necessary for strong, powerful nerves. Medicinal phosphorus is prescribed by doctors to soothe and quiet irritated, shaky, achy nerves. It is a valuable medicine in nervous conditions that cause a constant tired and worn-out feeling.

This excellent preparation also contains a form of Iron which is useful in making rich red blood for building firmer, healthier muscle and bringing back color and fullness to pale, thin faces when caused by simple anemia. In addition NUGA-TONE contains other valuable medicines. Start taking NUGA-TONE today and notice how your blood and nerves will be invigorated. Sold by all druggists at only One Dollar for a month's treatment. Money back if you are not satisfied.

For constipation take—UGA-SOL—The Ideal Laxative. 25¢ and 50¢.

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 "Nuga-Tone" possesses substantial therapeutic value in the treatment of nervous disorders.

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 "Nuga-Tone" does not possess any value in the treatment of nervous disorders. Moreover, said preparation is not a safe and harmless preparation in that it contains the drugs Corrosive Sublimate, Strychnine Sulphate, Arsenic Trioxide, Reduced Iron, Extract Gentian, Extract Cascara Sagrada, Extract Taraxacum and Zinc Phosphide in quantities, sufficient to produce serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary and usual.

Such use of said preparation may result in chronic poisoning which may be recognized by renal irritations, nervous irritability, neuritis, psychoses, nutritional disturbances leading to cachexia, muscular atrophy, decalcification of the bones, and anemia.

PAR. 6. In addition to the representations hereinabove set forth respondent has also engaged in the dissemination of false advertise-

ments in the manner above set forth, in that said advertisements of the preparation designated as "Nuga-Tone" failed to reveal facts material in the light of such representations and failed to reveal that the use of said preparation under the conditions prescribed in said advertisements or under conditions as are customary or usual may result in serious and irreparable injury to health.

PAR 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 said statements, representations and advertisements are true, and that the preparation designated as "Nuga-Tone" is a valuable medicine for the treatment of nervous disorders, and to induce directly or indirectly, 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 27, 1940 issued and on August 28, 1940 served its complaint in this proceeding upon the respondent National Proprietaries, 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 October 5, 1940, the respondent filed its answer, in which answer respondent 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. National Proprietaries, Inc., is a corporation, organized, existing, and doing business under the laws of the State

of Illinois, with its office and principal place of business located at 767 North Milwaukee Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for some time past has been, engaged in the sale and distribution of a drug preparation advertised as "Nuga-Tone." Respondent has caused said preparation, when sold, to be transported from its place of business in the State of Illinois 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 and the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said preparations, by United States mails, 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 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 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:

WIECEJ ENERGII DLA NERWOWYCH, PRZEMECZONYCH MEZCZYZN I KOBIET

NUGA-TONE zawiera duzo Zinc Phosphide, wartosciowego skladnika dostarzzajacego fosforu, tak potrzebnego do silnych, mocnych nerwow. Lekarstwo zawierajace fos for jest przepisywane przez lekarzy w celu uspokojenia i uleczenia rozdraznionych, niespokojnych bolacych nerwow. Jest to pomocne lekarstwo, gdy stan nerwowy powdouje ciagle uczucie przemecznia i brak wypoczynku.

Ten doskonaly preparat takze zawiera te forme zelaza, ktora przyczynia sie do budowania bogatej, czerwonej krwi, do budowania silnie-jszych, zdrowszych muskulow i do przywracania koloru i zdrowego wygladu chudym, bladym twarzom, jesli powodem tego jest anemia. Pozatym Nuga-Tone zawiere inne cenne lecznicze skladniki Zacznij uzywac NUGA-TONE dzisiaj i zauwaz jak twoja krew i nerwy odzyja. Sprzedawane we wszystkich aptekach po cenie Jednego Dolara za jednomiesieczny okres leczenia. Pieniadze zostana zwrocone jesli nie bedziecie zupelnie zadoweleni.

Na zatwardzenie uzyj—UGA-SOL—Idealny srodek rozwalniajacy. 25¢ i 50¢.

The English translation of the above statement is as follows:

MORE PEP FOR NERVOUS, RUN-DOWN MEN AND WOMEN

NUGA-TONE is rich in Zinc Phosphide, the precious compound supplying an available phosphorus, the element so necessary for strong, powerful nerves. Medicinal phosphorus is prescribed by doctors to soothe and quiet irritated, shaky, achy nerves. It is a valuable medicine in nervous conditions that cause a constant tired and worn-out feeling.

This excellent preparation also contains a form of Iron which is useful in making rich red blood for building firmer, healthier muscle and bringing back color and fullness to pale, thin faces when caused by simple anemia. In addition NUGA-TONE contains other valuable medicines. Start taking NUGA-TONE today and notice how your blood and nerves will be invigorated. Sold by all druggists at only One Dollar for a month's treatment, Money back if you are not satisfied.

For constipation take—UGA-SOL—The Ideal Laxative. 25¢ and 50¢.

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 "Nuga-Tone" possesses substantial therapeutic value in the treatment of nervous disorders.

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 "Nuga-Tone" does not possess any value in the treatment of nervous disorders. Moreover, said preparation is not a safe and harmless preparation in that it contains the drugs Corrosive Sublimate, Strychnine Sulphate, Arsenic Trioxide, Reduced Iron, Extract Gentian, Extract Cascara Sagrada, Extract Taraxacum and Zinc Phosphide in quantities sufficient to produce serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary and usual.

Such use of said preparation may result in chronic poisoning which may be recognized by renal irritations, nervous irritability, neuritis, psychoses, nutritional disturbances leading to cachexia, muscular atrophy, decalcification of the bones, and anemia.

PAR. 6. 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 of the preparation designated as "Nuga-Tone" 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 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 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 said statements, representations, and advertisements are true, and that the preparation designated as "Nuga-Tone" is a valuable medicine for the treatment of nervous disorders, and to induce directly or indirectly 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 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, National Proprietaries, Inc., a corporation, its agents, representatives, employees, and officers, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its medicinal preparation now designated as Nuga-Tone, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by 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 respondent's preparation Nuga-Tone possesses any therapeutic value in the treatment of nervous disorders or which advertisement fails to reveal that the use of said preparation may result in chronic poisoning, irritation of the kidneys, nervous irritability, neuritis, psychoses, cachexia, muscular atrophy, decalcification of the bones or anemia.

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 Nuga-Tone, which advertisement contains any of the representations prohibited in paragraph 1 hereof or which fail to reveal that the use of said preparation may result in chronic poisoning, irritation of the kidneys, nervous irritability, neuritis, psychoses, cachexia, muscular atrophy, decalcification of the bones or anemia.

It is further ordered, That 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 S. BENHAM, TRADING AS THE ZONE COMPANY, ACTIVE MERCHANDISERS, ACTIVE MEDICINE, NU-MODE COMPANY, AND AMERICAN 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 4352. Complaint, Oct. 17, 1940—Decision, Jan. 15, 1941

Where an individual engaged, under various trade names such as The Zone Co., American Medicine Co., and others, in interstate sale and distribution of various medicinal preparations, including certain products and devices for so-called feminine hygiene purposes, designated as Nu-Mode Vaginal Jelly (also known as A. M. Vaginal Jelly), Nu-Mode Hygiene Tablets, Vaginal Suppositories, Douche Tablets and Powders, Athlete's Foot Salve, Wonder Salve, and Womb Supporter; in advertisements of his said medicinal preparations and devices which he 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, and circulars and other printed matter, and which were intended and likely to induce purchase of his said preparations and devices—

(*a*) Represented, directly and through implication, that his products Nu-Mode Vaginal Jelly, A. M. Vaginal Jelly, Nu-Mode Hygiene Tablets, Vaginal Suppositories and Douche Tablets, and Speed Nu-Mode Hygiene Douche Tablets, were safe, competent and effective preventives against conception, and that use of such products was a dependable, positive, and guaranteed method of preventing pregnancy due to antiseptic and powerful germ-destroying properties thereof, and that such use prevented disease, insured health, and caused rapid destruction of bacteria, that said products were effective as prophylactics and healed delicate membranes and tissues in vaginal tract and formed competent and effective treatments for subnormal or unhealthy conditions of the uterus or vagina, and that they were prescribed by well known physicians or gynecologists, facts being said products did not form or constitute safe or competent preventives against conception and, while they might possess antiseptic properties, they were not powerful germicides and did not provide dependable, positive or guaranteed method of preventing pregnancy, said products were not effective prophylactics or preventives against disease and would not insure health, cause rapid destruction of bacteria or heal membranes or tissues of vaginal tract, and they were not competent and effective treatments for unhealthy conditions in uterus or vagina and were not prescribed or recommended by well known physicians and gynecologists;

(*b*) Represented that said Supporter was comfortable, efficient and sanitary, supported the womb without irritation to vagina or any interference with any function or act of nature, and tended to relieve overworked muscles, giving nature a chance to heal and return womb to its proper position, and that said product was efficacious in treatment of mild sores, swollen or inflamed uterine parts and fissures, facts being use of said supporter, as advertised, disregards anatomical relationships and gynecological principles, and would

be of little or no value in treatment of either forward or backward displacement of uterus or any inflammation of uterine parts, and said product would tend to cause vaginal inflammation and ulcerations due to pressure, and, in order to provide temporary artificial support for uterus it is necessary that physical examination for fitting of the device to meet individual requirements in each case be secured.

(*c*) Represented, directly and by implication, that said Foot Salve was a cure or remedy for athlete's foot and constituted competent and effective treatment therefor, and that it quickly relieved trouble by ridding user of germ causing such condition, facts being said preparation was not a cure or remedy for such condition, and had no therapeutic value in treatment thereof, in excess of temporarily relieving symptoms of itching and, in some cases, destroying the superficial fungi associated with athlete's foot; and

(*d*) Represented, directly and by implication, that application of his Wonder Salve instantly healed and relieved irritation and acted as a bar against infection, and that it was a cure or remedy for common eczema, sores, itch, rash, old sores, leg sores, chafe, sunburn, pimples, insect bites, acne, cuts and bruises, and constituted competent and effective treatment therefor, facts being said preparation was not a cure or remedy for eczema and other forms of itch or rash and did not constitute competent or effective treatment therefor, in excess of affording temporary relief from symptoms of itching associated with such conditions, it had little or no value in treatment of acne and pimples, and had no properties which would be effective in preventing infection and had little or no value in treatment of ulcers, described by said individual as old sores and leg sores;

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, because of such belief, portion of such public to purchase his said preparations and devices:

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 Harry S. Benham, an individual, trading under the names of The Zone Co., Active Merchandisers, Active Medicine, Nu-Mode Co., and American Medicine Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, Harry S. Benham, is an individual trading and doing business as The Zone Co., Active Merchandisers, Active Medicine, Nu-Mode Co., and American Medicine Co., and has his

principal place of business at 620 Orleans Street, Chicago, Ill. The respondent is now, and for more than 1 year last past, has been engaged in the sale and distribution of various medicinal preparations and devices in commerce among and between the various States of the United States and in the District of Columbia.

Among the preparations so sold and distributed by the respondent are certain medicinal preparations and devices for so-called feminine hygiene purposes, designated as Nu-Mode Vaginal Jelly (also known as A. M. Vaginal Jelly), Nu-Mode Hygiene Tablets, Vaginal Suppositories, Douche Tablets and Powders, Athlete's Foot Salve, Wonder Salve, and Womb Supporter.

Respondent causes said preparations and devices when sold to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein, has maintained, a course of trade in said medicinal preparations and devices in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said products, by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, and has 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 statements and representations contained in said false advertisements, disseminated and caused to be disseminated as aforesaid, by United States mails, by advertisements in newspapers and periodicals, and by circulars and other printed matter, are the following with reference to the various and respective products of respondent:

Nu-Mode Vaginal Jelly and A. M. Vaginal Jelly:

Many well known gynecologists, recommend this method of feminine hygiene above all others.

It penetrates every part of the vagina reaching every muscular fold and crease where harmful germs or innate secretions can possible accumulate . . . Its marvelous adhesive powers cause it to form a practically impenetrable film over these folds. This film lasts for hours giving positive safety against new toxic infections.

It is a convenient way of keeping their personal daintiness and at the same time protecting their health.

Nu-Mode Hygiene Tablets:

For dependable antiseptic safeguarding in Feminine Hygiene!

CAN BE RECOGNIZED AS THE GREATEST BOON OF ITS KIND TO THE MODERN WOMAN THAT THE WORLD HAS EVER KNOWN.

FOR FEMININE HYGIENE! NU-MODE Vaginal Antiseptic Tablets are designed to combine the two essential qualities of ABSOLUTE HARMLESSNESS with MAXIMUM GERM-DESTROYING ABILITY. The natural moisture within the vagina causes the tablet to quickly dissolve into a MOST POWERFUL GERM-DESTROYING FOAM which pervades into every fold and crevice of the vaginal canal, effecting absolute killing of inherent bacteriological life contained in discharges and secretions of the uterus and vagina. THIS FOAM IS AS HARMLESS AS MILK to the most delicate, tender, and sensitive tissues and membranes. This germ-destroying foam is not felt—nor does it interfere with any function or fecunding of female nature, or cause bad unnatural after effects. They have no noticeable odor.

Vaginal Suppositories:

Refined women today carefully practice feminine hygiene and do not take the risks of toxic danger that may develop from inefficient or improper attention to this matter.

Many women use solutions containing tissue harming alcohol, crude bichloride of mercury and other dangerous ingredients until the delicate tissues are injured when they stop all forms of feminine hygiene, which is a great mistake.

Nu-Mode Vaginal Suppositories do not cause the slightest irritation or discomfort since they melt rapidly at body temperature. Continued use over a long period of time should not harden, coarsen or make less sensitive the delicate tissues of the region but encourage more perfect functioning power. These suppositories are dangerous ONLY to harmful, inherent germ life.

Douche Tablets and Powders:

SURETY: It does what is required. There need be no doubt about feminine hygiene and cleanliness if you know the proper use of the douche. 100 tablets in a box. Perfumed, contains strong antiseptics.

SPEED NU-MODE Hygiene Douche Tablets dissolve as a rule more rapidly than the average. They almost equal the speed of liquid. We know of nothing their equal.

SAFETY: It CANNOT harm you. Made of U. S. P. ingredients, it is pure, containing no bichloride of mercury, or other dangerous caustics.

PAR. 3. In said statements together with other similar statements not set out herein with respect to the products named, and in general advertising, respondent, directly and through implication, represents that his products, Nu-Mode Vaginal Jelly, A. M. Vaginal Jelly, Nu-Mode Hygiene Tablets, Vaginal Suppositories and Douche Tablets, and Speed Nu-Mode Hygiene Douche Tablets, for safe, competent and effective preventives against conception; that the use of such products is a dependable, positive and guaranteed method of preventing pregnancy due to the antiseptic and powerful germ-destroying properties of such products; that the use of said products prevents disease, insures health, causes the rapid destruction of bacteria; 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 unhealthy conditions of the uterus or vagina; and that they are prescribed by well known physicians or gynecologists.

In truth and in fact said products do not form or constitute safe or competent preventives against conception. While such products may possess antiseptic properties, they are not powerful germicides and do not provide a dependable, positive or guaranteed method of preventing pregnancy. Said products are not effective prophylactics or preventives against disease; and will not insure health, cause the rapid destruction of bacteria, or heal the membranes or tissues of the vaginal tract. They are not competent and effective treatments for unhealthy conditions in the uterus or vagina; and are not prescribed or recommended by well known physicians and gynecologists.

PAR. 4. With reference to the Nu-Mode Ladies' Womb Supporter, such statements as the following are made:

The Nu-Mode Ladies Womb Supporter is made of * * *. Comfortable, efficient and sanitary it is so light and flexible as to be unnoticeable. It is impossible not to insert it properly as every side is alike. The deeply cupped sides cling to the walls of the vagina, keeping the supporter from slipping and supporting the womb lightly but firmly. It does not irritate the vagina or INTERFERE WITH ANY FUNCTION OR ACT OF NATURE. As sure and pure as the air you breathe and as comfortable as an old shoe.

The Nu-Mode Ladies Perfect Supporter is placed at the neck of the womb, tending to relieve the over-worked muscles and giving nature a chance to heal and is to be used when an operation is not indicated. This gradually helps to return the womb to its proper position.

Many women use the Nu-Mode Ladies Supporter for home treatment of mild sores, swollen, or inflamed uterine parts, and fissures so common with MOST MARRIED WOMEN. Placing the salve or medicine in the cups of the Nu-Mode Ladies Supporter before insertion insures medication of the exact parts desired.

In said statements together with other similar statements not set-out herein with respect to the above product, respondent represents that the product is comfortable, efficient and sanitary; that it supports the womb, without irritation to the vagina or any interference with any function or act of nature and tends to relieve overworked muscles, giving nature a chance to heal and return the womb to its proper position; that it is efficacious in the treatment of mild sores, swollen or inflamed uterine parts and fissures.

In truth and in fact the use of the said supporter as advertised disregards anatomical relationships and gynecological principles. The use of the product as advertised would be of little or no value in the treatment of either the forward or backward displacement of the uterus or any inflammation of the uterine parts. Furthermore, the product would tend to cause vaginal inflammation and ulcerations

due to the pressure; and in order to provide for temporary artificial support for the uterus it is necessary that a physical examination for the fitting of the device to meet the individual requirements in each case, be secured.

PAR. 5. With reference to the product known as A. M. Athlete's Foot Salve, such statements as the following were made:

STOP FOOT ITCH

Athlete's Foot * * * For your own health and comfort you should do your utmost to stop the contamination from spreading. Start your treatment "now". A. M. Athlete's Foot Salve was made solely for treating athlete's foot. Almost never fails to bring relief from itching quickly and relieves source of trouble by *ridding you of the dread germ.*

In said statements together with other similar statements not set out herein with respect to the product named, respondent, directly and by implication, represents that said preparation is a cure or remedy for athlete's foot and constitutes a competent and effective treatment therefor, and that it quickly relieves the trouble by ridding the user of the germ caused such condition.

In truth and in fact said preparation is not a cure or remedy for athlete's foot and has no therapeutic value in the treatment thereof, in excess of temporarily relieving the symptoms of itching and in some cases destroying the superficial fungi associated with athlete's foot.

With reference to the product known as A. M. Wonder Salve, such statements as the following were made:

A. M. WONDER SALVE

Words cannot describe the merits, instant healing sensation and relief of A. M. Wonder Salve.

It is designed for the double purpose of allaying the irritation and insulating against continued infection. * * * Try it on common eczema, sores, itch, rash, old sores, leg sores, chafe, sunburn, pimples, insect bites, acne, cuts, bruises, etc.

In said statements, together with other similar statements not set out herein with respect to said product, respondent, directly and by implication, represents that application of the product instantly heals and relieves irritation and acts as a bar against infection; that it is a cure or remedy for common eczema, sores, itch, rash, old sores, leg sores, chafe, sunburn, pimples, insect bites, acne, cuts and bruises, and constitutes a complete and effective treatment therefor.

In truth and in fact, said preparation is not a cure or remedy for eczema and other forms of itch or rash and does not constitute a competent or effective treatment therefor, in excess of affording temporary relief from the symptoms of itching associated with such conditions. Said preparation would have little or no value in the treatment of acne

and pimples. Respondent's preparation has no properties which would be effective in preventing infection and would have little or no value in the treatment of ulcers, described by the respondent as old sores and leg sores.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his preparation disseminated 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 meaning and intent of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 17, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Harry S. Benham, an individual, trading as The Zone Co., Active Merchandisers, Active Medicine, Nu-Mode Co., and American Medicine Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On November 16, 1940, 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, Harry S. Benham, is an individual trading as The Zone Co., Active Merchandisers, Active Medicine, Nu-Mode Co. and American Medicine Co. with his office and principal place of business at 620 Orleans Street, Chicago, Ill., from which address he transacts business under the above trade names.

The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of various medicinal preparations and devices in commerce among and between the various States of the United States and in the District of Columbia.

Among the preparations so sold and distributed by the respondent are certain medicinal preparations and devices for so-called feminine hygiene purposes, designated as Nu-Mode Vaginal Jelly (also known as A. M. Vaginal Jelly), Nu-Mode Hygiene Tablets, Vaginal Suppositories, Douche Tablets and Powders, Athlete's Foot Salve, Wonder Salve, and Womb Supporter.

Respondent causes said preparations and devices when sold to be transported from his place of business in the State of Illinois to purchaser thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein, has maintained a course of trade in said medicinal preparations and devices in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said products, by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, and has 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 statements and representations contained in said false advertisements, disseminated and cause to be disseminated as aforesaid, by United States mails, by advertisements in newspapers and periodicals, and by circulars and other printed matter, are the following with reference to the various and respective products of respondent:

Nu-Mode Vaginal Jelly and A. M. Vaginal Jelly:

Many well known gynecologists, recommend this method of feminine hygiene above all others.

It penetrates every part of the vagina reaching every muscular fold and crease where harmful germs or innate secretions can possibly accumulate * * * Its marvelous adhesive powers cause it to form a practically impenetrable film over these folds. This film lasts for hours giving positive safety against new toxic infections.

It is a convenient way of keeping their personal daintiness and at the same time protecting their health.

Nu-Mode Hygiene Tablets:

For dependable antiseptic safeguarding in Feminine Hygiene!

CAN BE RECOGNIZED AS THE GREATEST BOON OF ITS KIND TO MODERN WOMAN THAT THE WORLD HAS EVER KNOWN.

FOR FEMININE HYGIENE! NU-MODE Vaginal Antiseptic Tablets are designed to combine the two essential qualities of ABSOLUTE HARMLESSNESS with MAXIMUM GERM-DESTROYING ABILITY. The natural moisture within the vagina causes the tablet to quickly dissolve into a MOST POWERFUL GERM-DESTROYING FOAM which pervades into every fold and crevice of the vaginal canal, effecting absolute killing of inherent bacteriological life contained in discharges and secretions of the uterus and vagina. THIS FOAM IS AS HARMLESS AS MILK to the most delicate, tender and sensitive tissues and membranes. This germ-destroying foam is not felt—nor does it interfere with any function or fecunding of female nature, or cause bad unnatural after effects. They have no noticeable odor.

Vaginal Suppositories:

Refined women today carefully practice feminine hygiene and do not take the risks of toxic danger that may develop from inefficient or improper attention to this matter.

Many women use solutions containing tissue harming alcohol, crude bichloride of mercury and other dangerous ingredients until the delicate tissues are injured when they stop all forms of feminine hygiene, which is a great mistake.

Nu-Mode Vaginal Suppositories do not cause the slightest irritation or discomfort since they melt rapidly at body temperature. Continued use over a long period of time should not harden, coarsen or make less sensitive the delicate tissues of the region but encourage more perfect functioning power. These suppositories are dangerous ONLY to harmful, inherent germ life.

Douche Tablets and Powders:

SURETY: It does what is required. There need be no doubt about feminine hygiene and cleanliness if you know the proper use of the douche. 100 tablets in a box. Perfumed, contains strong antiseptics.

SPEED NU-MODE Hygiene Douche Tablets dissolve as a rule more rapidly than the average. They almost equal the speed of liquid. We know of nothing their equal.

SAFETY: IT CANNOT harm you. Made of U. S. P. ingredients, it is pure, containing no bichloride of mercury, or other dangerous caustics.

PAR. 3. In said statements together with other similar statements not set out herein with respect to the products named, and in general advertising, respondent, directly and through implication, represents that his products, Nu-Mode Vaginal Jelly, A. M. Vaginal Jelly, Nu-Mode Hygiene Tablets, Vaginal Suppositories and Douche Tablets, and Speed Nu-Mode Hygiene Douche Tablets, are safe, competent and effective preventives against conception; that the use of such products is a dependable, positive, and gauaranteed method of

preventing pregnancy due to the antiseptic and powerful germ-destroying properties of such products; that the use of said products prevents disease, insures health, causes the rapid destruction of bacteria; 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 unhealthy conditions of the uterus or vagina; and that they are prescribed by well known physicians or gynecologists.

In truth and in fact said products do not form or constitute safe or competent preventives against conception. While such products may possess antiseptic properties, they are not powerful germicides and do not provide a dependable, positive or guaranteed method of preventing pregnancy. Said products are not effective prophylactics or preventives against disease; and will not insure health, cause the rapid destruction of bacteria, or heal the membranes or tissues of the vaginal tract. They are not competent and effective treatments for unhealthy conditions in the uterus or vagina; and are not prescribed or recommended by well known physicians and gynecologists.

PAR. 4. With reference to the Nu-Mode Ladies' Womb Supporter, such statements as the following are made:

The Nu-Mode Ladies Womb Supporter is made of * * *. Comfortable, efficient and sanitary it is so light and flexible as to be unnoticeable. It is impossible not to insert it properly as every side is alike. The deeply cupped sides cling to the walls of the vagina, keeping the supporter from slipping and supporting the womb lightly but firmly. It does not irritate the vagina or INTERFERE WITH ANY FUNCTION OR ACT OF NATURE. As sure and pure as the air you breathe and as comfortable as an old shoe.

The Nu-Mode Ladies Perfect Supporter is placed at the neck of the womb, tending to relieve the over-worked muscles and giving nature a chance to heal and is to be used when an operation is not indicated. This gradually helps to return the womb to its proper position.

Many women use the Nu-Mode Ladies Supporter for home treatment of mild sores, swollen, or inflamed uterine parts, and fissures so common with MOST MARRIED WOMEN. Placing the salve or medicine in the cups of the Nu-Mode Ladies Supporter before insertion insures medication of the exact parts desired.

In said statements together with other similar statements not set out herein with respect to the above product, respondent represents that the product is comfortable, efficient and sanitary; that it supports the womb, without irritation to the vagina or any interference with any function or act of nature and tends to relieve overworked muscles, giving nature a chance to heal and return the womb to its proper position; that it is efficacious in the treatment of mild sores, swollen or inflamed uterine parts and fissures.

In truth and in fact the use of the said supporter as advertised disregards anatomical relationships and gynecological principles.

The use of the product as advertised would be of little or no value in the treatment of either the forward or backward displacement of the uterus or any inflammation of the uterine parts. Furthermore, the product would tend to cause vaginal inflammation and ulcerations due to the pressure; and in order to provide for temporary artificial support for the uterus it is necessary that a physical examination for the fitting of the device to meet the individual requirements in each case, be secured.

PAR. 5. With reference to the product known as A. M. Athlete's Foot Salve, such statements as the following were made:

STOP FOOT ITCH

Athlete's Foot * * * For your own health and comfort you should do your utmost to stop the contamination from spreading. Start your treatment "now." A. M. Athlete's Foot Salve was made solely for treating athlete's foot. Almost never fails to bring relief from itching quickly and relieves source of trouble by *ridding you of the dread germ.*

In said statements together with other similar statements not set out herein with respect to the product named, respondent, directly and by implication, represents that said preparation is a cure or remedy for athlete's foot and constitutes a competent and effective treatment therefor, and that it quickly relieves the trouble by ridding the user of the germ causing such condition.

In truth and in fact said preparation is not a cure or remedy for athlete's foot and has no therapeutic value in the treatment thereof, in excess of temporarily relieving the symptoms of itching and in some cases destroying the superficial fungi associated with athlete's foot.

With reference to the product known as A. M. Wonder Salve, such statements as the following were made:

A. M. WONDER SALVE

Words cannot describe the merits, instant healing sensation and relief of A. M. Wonder Salve.

It is designed for the double purpose of allaying the irritation and insulating against continued infection. * * * Try it on common eczema, sores, itch, rash, old sores, leg sores, chafe, sunburn, pimples, insect bites, acne, cuts, bruises, etc.

In said statements, together with other similar statements not set out herein with respect to said product, respondent, directly and by implication, represents that application of the product instantly heals and relieves irritation and acts as a bar against infection; that it is a cure or remedy for common eczema, sores, itch, rash, old

sores, leg sores, chafe, sunburn, pimples, insect bites, acne, cuts and bruises, and constitutes a competent and effective treatment therefor.

In truth and in fact, said preparation is not a cure or remedy for eczema and other forms of itch or rash and does not constitute a competent or effective treatment therefor, in excess of affording temporary relief from the symptoms of itching associated with such conditions. Said preparation would have little or no value in the treatment of acne and pimples. Respondent's preparation has no properties which would be effective in preventing infection and would have little or no value in the treatment of ulcers, described by the respondent as old sores and leg sores.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to his said preparations and devices, 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 said preparations and devices.

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 meaning and intent of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of 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, Harry S. Benham, individually, and trading as The Zone Co., Active Merchandisers, Active Medicine, Nu-Mode Co., and American Medicine Co., or trading under any other name or names, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Nu-Mode Vaginal Jelly

(also known as A. M. Vaginal Jelly), Nu-Mode Hygiene Tablets, Vaginal Suppositories and Douche Tablets, Speed Nu-Mode Hygiene Douche Tablets, Athlete's Foot Salve, Wonder Salve, and Womb Supporter, or any products or devices of substantially similar composition or possessing substantially similar properties, whether sold under the same 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:

(*a*) That use of respondent's products known as Nu-Mode Vaginal Jelly (also known as A. M. Vaginal Jelly), Nu-Mode Hygiene Tablets, Vaginal Suppositories and Douche Tablets and Speed Nu-Mode Hygiene Douche Tablets form safe, competent and effective preventatives against conception; that said products possess powerful germ-destroying properties; or that their use constitutes a dependable, positive or guaranteed method of preventing pregnancy.

(*b*) That respondent's product known as Nu-Mode Ladies Womb Supporter is comfortable, efficient or sanitary; that it supports the womb without irritation; that it tends to relieve over-worked muscles; or that said device has any theraupetic value in the treatment of either the forward or backward displacement of the uterus or in the treatment of any inflammation of the uterine parts.

(*c*) That respondent's product known as Athlete's Foot Salve is a cure or remedy for the condition known as Athlete's Foot or that it has any therapeutic value in the treatment thereof in excess of temporarily relieving the symptoms of itching and in some cases destroying the superficial fungi associated with Athlete's Foot.

(*d*) That respondent's product known as A. M. Wonder Salve is a cure or remedy for eczema or other forms of itch or rash or has any therapeutic value in the treatment thereof in excess of affording temporary relief from the symptoms of itching associated with such conditions; or that said preparation has any properties which would be effective in preventing infection or has any value in the treatment of ulcers, old sores, leg sores, acne or pimples.

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

HOME DIATHERMY COMPANY, INC.

MODIFIED CEASE AND DESIST ORDER

Docket 3653. Order, Jan. 18, 1941

Order modifying prior order to cease and desist, made as of November 20, 1940, 31 F. T. C. 1407—and which required respondent corporation, its officers, etc., in connection with offer, etc., of their "Home Diathermy" device, or other substantially similar device, to cease and desist from disseminating or causing to be disseminated, as there set forth, advertisements which represent that such device may be easily and safely used in the home, or that use thereof constitutes a cure or remedy for various ailments and conditions specified or has any therapeutic value in the treatment of any other ailment, unless limited as in said order specified, or which advertisements fail to reveal that unsupervised use thereof by those not skilled in diagnosis, analysis and methods of treatment of disease may result in serious and irreparable injury to health—by prohibiting dissemination, etc., of such advertisements which, in addition to representations otherwise prohibited as above set forth, fail 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."

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.

ORDER MODIFYING 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 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, on November 20, 1940, having made and issued its findings as to the facts and its conclusion that the respondent had violated the provisions of the Federal Trade Commission Act, and having made and issued its order to cease and desist herein on the same date, and it now appearing that such order to cease and desist should be modified in certain respects, and the Commission

having now duly considered the matter and being now fully advised in the premises.

It is ordered, That the order to cease and desist issued herein on November 20, 1940, be, and the same hereby is, modified so that as modified such order to cease and desist shall read:

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 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 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.

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 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.

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

JOE B. HILL AND C. O. McAFEE, TRADING AS McAFEE CANDY COMPANY, AND LIBERTY 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 4114. Complaint, Apr. 26, 1940—Decision, Jan. 21, 1941

Where two partners 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 games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, and included, as illustrative of methods used (1) large number of chocolate-covered pieces of uniform size and shape, together with 24 small candy bars and one large bar, for sale and distribution to purchasers under a plan by which purchaser procuring, by chance, one of said pieces having center differing in color from that of the majority of said candy pieces of uniform size and shape, was entitled to and received without additional cost one of said small bars, and person procuring last one of said pieces of uniform size and shape in assortment was entitled to and received without additional cost said large bar, and (2) number of bars of candy of uniform size and shape, together with a push card for use in sale and distribution to purchasers of said bars, under a plan by which purchaser paid 1 cent, 2 cents, 3 cents, 4 cents, and 5 cents, as case might be, for bar, in accordance with particular number secured by chance from card, and purchaser making last push in each of two sections into which card was divided received without additional cost two of said bars, and in furnishing, as thus engaged, various push cards for use in sale and distribution of their candy by means of game of chance, gift enterprise, or lottery scheme under plans similar to that hereinabove described and varying therefrom in detail only—

Sold such assortments, together with said push cards, as case might be, to wholesalers, to jobbers, and to retailers by whom, as direct or indirect purchasers thereof, they 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 their products in accordance with such sales plans, involving game of chance or sale of a chance to procure bars of candy at prices much less than normal retail value thereof, or additional bars of candy without additional cost, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use such 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 employed by them in sale and distribution of their said candy, and element of chance involved therein, and were thereby induced to buy and sell their said candy in preference to that of said competitors who do not use same

or equivalent methods, and with tendency and capacity, through use of said methods and because of said game of chance, to unfairly divert trade to them from their 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.

Before *Mr. W. W. Sheppard*, 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 Joe B. Hill and C. O. McAfee, individuals and copartners trading as McAfee Candy Co. and Liberty Candy 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondents Joe B. Hill and C. O. McAfee are individuals and copartners trading as McAfee Candy Co. and Liberty Candy Co., with their principal office and place of business located at 651 Poplar Street, Macon, Ga. Respondents are now, and for more than 1 year last past have 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. Respondents cause and have caused said products when sold to be transported from their place of business in the city of Macon, Ga., to purchasers thereof, at their respective points of location, in the various States of the United States other than Georgia and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by respondents in such products in commerce between and among the various States of the United States and in the District of Columbia. 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 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 wholesale

dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondents but this list is not all inclusive of the various assortments nor does it include all of the details of the several plans which respondents have been or are using in the sale and distribution of candy by lot or chance;

(*a*) One assortment consists of 150 pieces of chocolate covered candy of uniform size and shape, together with 24 small bars of candy and one large bar of candy, which bars of candy are to be given as prizes to purchasers of said chocolate covered candy of uniform size and shape in the following manner:

The majority of said chocolate covered pieces of candy of uniform size and shape in said assortment has centers of the same color but 24 pieces of said chocolate covered candy have centers of a different color. The said pieces of chocolate covered candy of uniform size and shape in said assortment retail at the price of 1 cent each but the purchasers who procure a piece of the said candy having a center of a different color from the majority of said pieces are entitled to and receive without additional cost one of the said small bars of candy. The color of the centers of the said chocolate covered candy is effectively concealed from the prospective purchaser until a selection or purchase has been made and the piece of candy broken open. The person purchasing the last piece of chocolate covered candy of uniform size and shape in said assortment is entitled to and receives without additional cost the said large bar of candy. The said bars of candy in said assortment 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 as above described involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

(*b*) Another 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 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 cents, respectively. The card is also divided into two sections and the purchaser making the last push in each section receives without additional cost two of

the 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 respondents furnish and have furnished various push cards for use in the sale and distribution of their candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' said candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plans hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their candy and the sale of said candy by and through the use thereof and by the aid of said sales plans or methods is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candy to the purchasing public by the methods or plans hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy at prices much less than normal retail prices thereof, or additional bars of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with the respondents, as above alleged, are unwilling to adopt and use such methods or any method involving a game of chance or the sale of a chance to win something by chance, or any other method contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their candy and in the element of chance involved therein and are thereby induced to buy and sell respondents' candy in preference to candy of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents because of said game of chance has a tendency and capacity to, and does, unfairly divert trade 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 methods, and 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 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 26, 1940, issued and thereafter served its complaint in this proceeding upon respondents Joe B. Hill and C. O. McAfee, individuals and copartners, trading as McAfee Candy Company and Liberty Candy 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. On January 8, 1941, 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 Joe B. Hill and C. O. McAfee are individuals and copartners trading as McAfee Candy Co. and Liberty Candy Co., with their principal office and place of business located at 651 Poplar Street, Macon, Ga. Respondents are now, and for more than 1 year last past have 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. Respondents cause and have caused said products when sold to be transported from their place of business in the city of Macon, Ga., to purchasers thereof, at their respective points of location, in the various States of the United States other than Georgia and in the District of Columbia. There is now, and has been for more than one year last past, a course of trade by respondents in such products in commerce between and among the various States of the United States and in the District of Columbia. 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 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 wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondents but this list is not all inclusive of the various assortments nor does it include all of the details of the several plans which respondents have been using in the sale and distribution of candy by lot or chance;

(*a*) One assortment consists of 150 pieces of chocolate covered candy of uniform size and shape, together with 24 small bars of candy and one large bar of candy, which bars of candy are to be given as prizes to purchasers of said chocolate covered candy of uniform size and shape in the following manner:

The majority of said cholocate covered pieces of candy of uniform size and shape in said assortment has centers of the same color but 24 pieces of said chocolate covered candy have centers of a different color. The said pieces of chocolate covered candy of uniform size and shape in said assortment retail at the price of 1 cent each but the purchasers who procure a piece of the said candy having a center of a different color from the majority of said pieces are entitled to and receive without additional cost one of the said small bars of candy. The color of the centers of the said chocolate covered candy is effectively concealed from the prospective purchaser until a selection or purchase has been made and the piece of candy broken open. The person purchasing the last piece of chocolate covered candy of uniform size and shape in said assortment is entitled to and receives without additional cost the said large bar of candy. The said bars of candy in said assortment 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 as above described involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

(*b*) Another 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 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 cents, respectively. The card is also divided into two sections and the pur-

chaser making the last push in each section received without additional cost two of the 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 respondents furnish and have furnished various push cards for use in the sale and distribution of their candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondents' said candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plans 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 plans hereinabove set forth. The use by respondents of said sales plans or methods in the sale of their candy and the sale of said candy by and through the use thereof and by the aid of said sales plans or methods is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candy to the purchasing public by the methods or plans 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 prices thereof, or additional bars of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with the respondents, as above found, are unwilling to adopt and use such methods or any method involving a game of chance or the sale of a chance to win something by chance, or any other method contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondents in the sale and distribution of their candy and in the element of chance involved therein and are thereby induced to buy and sell respondents' candy in preference to candy of said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents because of said game of chance has a tendency and capacity to, and does, unfairly divert trade 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 methods.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents'

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission, having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Joe B. Hill and C. O. McAfee, individually and as copartners, trading as McAfee Candy Co. and Liberty Candy 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. Supplying to or placing in the hands of others, candy or any other merchandise, so packed or 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, candy or any other merchandise, together with punchboards, push or pull cards, or other lottery devices which said punchboards, push or pull cards or other lottery devices are to be used, or may be used, in selling or distributing such candy or other merchandise to the public;

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

S. M. FRANK & CO., INC., AND WM. DEMUTH & CO., INC.

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

Docket 4393. Complaint, Nov. 30, 1940—Decision, Jan. 21, 1941

Where a corporation and a second concern, subsidiary thereof, with common officers and same place of business, engaged in interstate sale and distribution of pipes and other articles of merchandise in competition with others engaged in sale and distribution of like and similar articles of merchandise in commerce, as aforesaid, and acting in conjunction and cooperation with each other in carrying out acts and practices below set forth; in soliciting sale of and in selling and distributing their merchandise to wholesalers, jobbers, and retailers—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes in sale or distribution of their said products to ultimate consumer, and shipped or transported punchboards designed to be and used with their said merchandise, to aforesaid purchasers, by whom said boards and products were assembled into various assortments and by them sold to their trade, and including among other such assortments, as illustrative, (1) number of pipes and board, for sale and distribution of said articles to consuming public, under a plan and in accordance with board's explanatory legend, by which purchaser securing by chance, for 5 cents paid, certain numbers, or making last punch in each of the sections into which board was divided, received one of said pipes, value of each of which was in excess of amount referred to, and purchaser who did not qualify as aforesaid received nothing for his money other than privilege of punching number from board, and (2) various other assortments and punchboards involving lot or chance feature similar to that hereinabove described and varying therefrom in detail only; and

Supplied thereby to and placed in hands of others means of conducting lotteries in sale of their merchandise, in accordance with sales plan as above set forth, by retail dealers who, as direct or indirect purchasers of their said merchandise, exposed and sold same to purchasing public in accordance with aforesaid sales plan, 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 method or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and refrain therefrom;

With the result that many were attracted by said sales plan or method employed by them in sale and distribution of their merchandise and element of chance involved therein, and were thereby induced to buy and sell their said merchandise in preference to that offered and sold by said competitors who do not use same or equivalent methods, and that use of said method, because of said game of chance, had tendency and capacity to

and did unfairly divert trade in commerce to them from their said competitors who did not use same or equivalent methods; to the substantial injury of competion in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of public and competitors, and constituted unfair 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 S. M. Frank & Co., Inc., a corporation, and Wm. Demuth & 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent S. M. Frank & Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 133 Fifth Avenue, New York, N. Y. Respondent Wm. Demuth & Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 133 Fifth Avenue, New York, N. Y. Both corporate respondents have the same individuals for their officers. The respondent Wm. Demuth & Co., Inc., is a subsidiary of the respondent S. M. Frank & Co., Inc., and the said respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices hereinafter alleged. Respondents are now, and for more than 3 years last past have been, engaged in the sale and distribution of pipes 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 transported from their aforesaid place of business in New York 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 for more than 3 years last past has been, a course of trade by respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said businesses, respondents are and have been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of like or similar

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

PAR. 2. In the course and conduct of their businesses, as described in paragraph 1 hereof, respondents, in soliciting the sale of and in selling and distributing their merchandise to wholesale dealers, jobbers, and retail dealers, furnish and have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes when used to sell or distribute said merchandise to the ultimate consumer thereof. Respondents also cause, and have caused, punch boards, which are designed to be, and are, used with the said merchandise, to be shipped or transported to the aforesaid wholesale dealers, jobbers and retail dealers. The wholesale dealers, jobbers, and retail dealers, in turn, assemble the punchboards and merchandise into one assortment and sell the same to their trade. Respondents distribute and have distributed various punchboards for use, or which are used, in the sale and distribution of their pipes and other merchandise to the consuming public by means of a game of chance, gift enterprise, or lottery scheme. One of said assortments is hereinafter described for the purpose of showing the method used by respondents.

This assortment consists of a number of pipes, together with a device commonly called a punchboard. Said pipes are distributed to the consuming public by means of said punchboard in the following manner:

The sales are 5 cents each, and when a punch is made from the board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing prospective purchasers as to which numbers entitle the purchaser thereof to receive a pipe. The punches on the board are arranged in three sections, and the purchaser of the last punch in each section receives a pipe. A purchaser who does not qualify by obtaining one of the numbers calling for one of the pipes or by punching the last number in one of the sections, receives nothing for his money other than the privilege of punching a number from the board. The pipes are worth more than 5 cents each, and a purchaser who obtains one of the numbers calling for a pipe or makes the last punch in one of the sections receives a pipe for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the number punched or separated from the board. The pipes are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various assortments of pipes along with punchboards, as hereinabove described, involving a lot or chance feature. Such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondents' said merchandise expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their 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 by 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 equivalent methods. The use of said method by respondents, because of said game of chance, has a tendency and capacity to and does unfairly divert trade 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 methods and as a result thereof substantial injury is being and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

merce within the intent and meaning of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 30, 1940, issued, and on December 2, 1940, served, its complaint in this proceeding upon respondents, S. M. Frank & Co., Inc., a corporation, and Wm. Demuth & Co., Inc., a corporation, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 19, 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 upon 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent S. M. Frank & Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 133 Fifth Avenue, New York, N. Y. Respondent Wm. Demuth & Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 133 Fifth Avenue, New York, N. Y. Both corporate respondents have the same individuals for their officers. The respondent Wm. Demuth & Co., Inc., is a subsidiary of the respondent S. M. Frank & Co., Inc., and the said respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices hereinafter found. Respondents are now, and for more than three years last past have been, engaged in the sale and distribution of pipes 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 transported from their aforesaid place of business in New York 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 for more than three

years last past has been, a course of trade by respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said businesses, respondents are and have been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their businesses, as described in paragraph 1 hereof, respondents, in soliciting the sale of and in selling and distributing their merchandise to wholesale dealers, jobbers and retail dealers, furnish and have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes when used to sell or distribute said merchandise to the ultimate consumer thereof. Respondents also cause and have caused punchboards, which are designed to be, and are, used with the said merchandise, to be shipped or transported to the aforesaid wholesale dealers, jobbers and retail dealers. The wholesale dealers, jobbers, and retail dealers, in turn, assemble the punchboards and merchandise into one assortment and sell the same to their trade. Respondents distribute and have distributed various punchboards for use, or which are used, in the sale and distribution of their pipes and other merchandise to the consuming public by means of a game of chance, gift enterprise, or lottery scheme. One of said assortments is hereinafter described for the purpose of showing the method used by respondents.

This assortment consists of a number of pipes, together with a device commonly called a punchboard. Said pipes are distributed to the consuming public by means of said punchboard in the following manner:

The sales are 5 cents each, and when a punch is made from the board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing prospective purchasers as to which numbers entitle the purchaser thereof to receive a pipe. The punches on the board are arranged in three sections, and the purchaser of the last punch in each section receives a pipe. A purchaser who does not qualify by obtaining one of the numbers calling for one of the pipes or by punching the last number in one of the sections, receives nothing for his money other than the privilege of punching a number from the board. The pipes are worth more than 5 cents each, and a purchaser who obtains one of the numbers calling for

a pipe or makes the last punch in one of the sections receives a pipe for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the number punched or separated from the board. The pipes are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondents sell and distribute, and have sold and distributed, various assortments of pipes along with punchboards, as hereinabove described, involving a lot or chance feature. Such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondents' said merchandise expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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

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

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, S. M. Frank & Co., Inc., a corporation, and Wm. Demuth & Co., Inc., a corporation, their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of smoking pipes or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Supplying to, or placing in the hands of, others push or pull cards, pull tabs, punchboards or other lottery devices either with assortments 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 said pipes 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 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

FRANK SPORS, TRADING AS SPORS COMPANY AND QUALITY 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 4397. Complaint, Dec. 3, 1940—Decision, Jan. 21, 1941

Where an individual engaged in interstate sale and distribution of his "Corn-Go" medicinal preparation for corns, calluses, and bunions in advertisements of his said product which he disseminated and caused to be disseminated through the mails and by various other means in commerce, and otherwise, and including advertisements in circulars, leaflets, catalogs, pamphlets, and other advertising literature, and which were intended and likely to induce purchase of his said product—

Represented, directly or by implication, that use of said preparation would remove corns, calluses, and bunions and prevent recurrence of such conditions, through such typical statements as "CORN-GO Corn & Callous Remover * * * No more sore and aching Corns and Callouses * * * Safely and cleanly removes soft and hard corns, callouses and Bunions," and "LIQUID CORN-GO * * * a painless, safe antiseptic corn and callous remover. Safely and cleanly removes soft and hard corns, callouses and Bunions * * *," facts being product in question was wholly incapable of removing bunions, and, while it would effect temporary removal of corns and calluses, it would not prevent recurrence of such conditions, and said preparation had no effect upon the underlying cause of corns and calluses;

With result, through use of aforesaid false, deceptive, and misleading statements, representations and advertisements, disseminated as above set forth, of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and of inducing substantial portion of said public, because of such erroneous and mistaken belief, to purchase 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. 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 Spors Co., and as Quality Products Co., hereinafter referred to as respondent, has violated the provisions of the

said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Frank Spors, is an individual doing business as Spors Co. and as Quality Products Co., with his office and principal place of business in the city of Le Center in the State of Minnesota.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of a certain medicinal preparation designated as "Corn-Go," intended for use in the treatment of corns, calluses and bunions. Respondent causes said prepation, when sold, to be transported from his aforesaid place of business in the State of Minnesota to the purchasers thereof at their respective points of location in various States of the United States other than the State of Minnesota and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in 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, 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; 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 circulars, leaflets, catalogs, pamphlets, and other advertising literature, are the following:

CORN-GO

Corn & Callous

Remover

* * *

No more sore and aching
Corns and Callouses
* * * Safely and cleanly removes
soft and hard corns, callouses
and Bunions

LIQUID CORN-GO

* * * a painless, safe antiseptic corn and callous remover. Safely and cleanly removes soft and hard corns, callouses and Bunions * * *

PAR. 4. Through the use of the statements and representations hereinabout 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 respondent's said preparation, respondent represents and has represented, directly or by implication, that the use of said preparation will remove corns, calluses, and bunions, and will prevent the recurrence of such conditions.

PAR. 5. The foregoing representations, used and disseminated by respondent as aforesaid, are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is wholly incapable of removing bunions. While said preparation will effect the temporary removal of corns and calluses, it will not prevent the recurrence of such conditions. Said preparation has no effect upon the underlying causes of corns and calluses.

PAR. 6. The use by the 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 and does mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said product.

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 December 3, 1940, issued and subsequently served its complaint in this proceeding upon Frank Spors, an individual trading as Spors Co. and as Quality 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 December 23, 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, Frank Spors, is an individual doing business as Spors Co. and as Quality Products Co., with his office and principal place of business in the city of Le Center in the State of Minnesota.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of a certain medicinal preparation designated as "Corn-Go," intended for use in the treatment of corns, calluses and bunions. Respondent causes said preparation, when sold, to be transported from his aforesaid place of business in the State of Minnesota to the purchasers thereof at their respective points of location in various States of the United States other than the State of Minnesota and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in 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, 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; 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 circulars, leaflets, catalogs, pamphlets, and other advertising literature, are the following:

CORN-GO
Corn & Callous
Remover
* * *
No more sore and aching
Corns and Callouses
* * * Safely and cleanly removes
soft and hard corns, callouses
and Bunions.
LIQUID CORN-GO
* * * a painless, safe antiseptic corn
and callous remover. Safely and cleanly
removes soft and hard corns, callouses
and Bunions * * *

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of respondent's said preparation, respondent represents and has represented, directly or by implication, that the use of said preparation will remove corns, calluses and bunions, and will prevent the recurrence of such conditions.

PAR. 5. The foregoing representations, used and disseminated by respondent as aforesaid, are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is wholly incapable of removing bunions. While said preparation will effect the temporary removal of corns and calluses, it will not prevent the recurrence of such conditions. Said preparation has no effect upon the underlying causes of corns and calluses.

PAR. 6. The use by the 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 and does mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said 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, Frank Spors, individually and trading as Spors Co. and as Quality Products 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 or distribution of his medicinal preparation designated "Corn-Go" and "Liquid Corn-Go," or any preparation of substantially similar composition 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 advertisement represents, directly or through inference, that said preparation will remove, or has any value in the treatment of, bunions; that said preparation will prevent the recurrence of corns or calluses or has any value in the treatment of such conditions in excess of the temporary removal thereof; or that the action of such preparation in removing calluses or corns accomplishes anything other than a temporary removal.

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.

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

IN THE MATTER OF

EDWARD SHILL AND SANFORD C. CHESICK, TRADING AS THE CHESHILL 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 4123. Complaint, May 1, 1940—Decision, Jan. 22, 1941

Where two individuals engaged in interstate sale and distribution of their "Safety-Bell Chain Lock" door device—

(*a*) Represented, through use of word "Manufacturing" in trade name employed by them, and through display thereof and word "Manufacturers" and "Manufactured" in letterheads and other advertising, as case might be, and on cartons of their products, that they were manufacturers of said and other patented protective devices, facts being they did not own, operate, or control any factory wherein any of said products were made, and were in no sense manufacturers thereof, or a manufacturer, by purchase from whom, direct, according to common belief among wholesalers, retailers, and members of purchasing public, superior grade of merchandise can be secured and at considerable saving in price, due to elimination of middlemen's profit and for other reasons; and

(*b*) Represented and implied that said device and other protective or safety devices offered and sold by them were patented, and that application for patent on said "Safety Bell Chain Lock" or some of the parts thereof was pending in the United States Patent Office, through such statements as "* * * Manufacturers of Patented Protective Devices * * *," and "Safety Bell Chain Locks, The Automatic Burglar Alarm * * * Pat. Pend.," facts being they were not holders of letters patent on said "Safety Bell Chain Lock" device or any protective devices or other articles of commerce, and had not applied for patent on former or any of the parts thereof, and had no such application pending, none of their said devices was a patented product or one for which application for patent was pending, and, as such, article which, according to common belief among wholesalers, retailers and members of purchasing public, is a superior product and one to be preferred over nonpatented article or one for which application for patent has not been made;

With effect, through use of word "Manufacturing" by them in their trade name and of other representations and implications aforesaid, of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that they were the manufacturers of protective devices and that they manufactured said "Safety Bell Chain Lock" device in factory owned, operated or directly and absolutely controlled by them, and that said device was patented or that an application for patent for said device or some of the parts thereof was pending, and with result, as consequence of such erroneous and mistaken belief, that substantial number of members of purchasing public brought substantial volume of their said device in commerce:

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. Jesse D. Kash for the Commission.

Robbins & Robbins, of New York City, for Edward Shill.

Cole & Cole, of Hartford, Conn., and *Mr. Mathew Vener*, of New York City, for Sanford C. Chesick.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Edward Shill and Sanford C. Chesick, individually, and trading as The Cheshill 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. Edward Shill and Sanford C. Chesick, are individuals trading and doing business under the name of The Cheshill Manufacturing Co. with their principal place of business located at 501 Seventh Avenue, New York, N. Y.

Par. 2. Respondents, Edward Shill and Sanford C. Chesick, are now, and for more than 1 year last past have been engaged in the sale and distribution of chain door locks, equipped with so-called safety bells, which are sold under the name Safety Bell Chain Locks. Respondents cause their product, when sold by them, to be transported from their 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.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said Safety Bell Chain Locks 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 product, respondents by means of advertising matter printed on letterheads, billheads, and on cartons containing their said product, and by other means, have falsely represented that they are manufacturers of said Safety Bell Chain Locks and other patented protective devices.

Respondents further, in the course and conduct of their said business, have sold and distributed said locks with the legend "Pat. Pend." stamped or braized in raised letters on the metal base thereof.

Among and typical of the representations contained in said false advertisements so used and disseminated, as aforesaid, are the following:

The Cheshill Manufacturing Co.
Manufacturers of
Patented Protective Devices
501 Seventh Avenue
New York, N. Y.

Safety Bell Chain Locks
The Automatic Burglar Alarm.
Manufactured and Guaranteed By
Cheshill Manufacturing Co.
501 Seventh Ave., New York, N. Y.

Cheshill Company, New York, N. Y.
Pat. Pend.

In the manner aforesaid, respondents represent and imply that said Safety Bell Chain Locks are patented and that an application for patent on said Safety Bell Chain Locks or some of the parts thereof is pending in the United States Patent Office, and that respondents are manufacturers of said product and that they own, operate or directly and absolutely control the factory in which said locks are made.

PAR. 4. There is a common belief among wholesalers, retailers, and members of the purchasing public that a superior grade of merchandise can be secured by purchasing direct from the manufacturer thereof, and at a considerable saving in price due to the elimination of the middleman's profit and for other reasons, and that a patented product, or one for which an application for patent is pending, is a superior product and one to be preferred over a nonpatented article or one for which an application for patent has not been made.

PAR. 5. The foregoing representations are grossly exaggerated, misleading, and untrue. In truth and in fact, respondents do not own, operate, or directly and absolutely control any factory and they are in no sense the manufacturers of said locks.

The respondents are not the holders of letters patent on said locks or any protective devices or other articles of commerce, and they have not applied for, nor do they have pending, a patent for their said Safety Bell Chain Locks or any of the parts thereof.

PAR. 6. The use by the respondents of the aforesaid representations and implications has the tendency and capacity to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that respondents are the manufacturers of said Safety Bell Chain Locks and that they own, operate or directly and absolutely control the factory in which said locks are made, and that said locks are patented or that an application for patent is pending for said locks or some of the parts thereof, and because of said erroneous and mistaken belief a substantial number of members of the purchasing public have purchased a substantial volume of respondents' said Safety Bell Chain Locks in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and 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 1, 1940, issued, and subsequently served, its complaint in this proceeding upon respondents Edward Shill and Sanford C. Chesick, individually and trading as The Cheshill Manufacturing 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 and the filing of an answer thereto by respondent Sanford C. Chesick, no answer having been filed by respondent Edward Shill, testimony and other evidence in support of the allegations of said complaint were introduced by Jesse D. Kash, attorney for the Commission, and in opposition to the allegations of the complaint by Abraham Robbins, attorney of the firm of Robbins and Robbins, 522 Fifth Avenue, New York, N. Y., appearing as counsel for respondent Edward Shill, and by Cyril Cole, attorney of the firm of Cole and Cole, 242 Trumbull Street, Hartford, Conn., and Mathew Vener, attorney, 110 William Street, New York, N. Y., appearing as counsel for respondent Sanford C. Chesick, before Lewis C. Russell, 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 of respondent Chesick thereto, testimony and other evidence, and brief in support of the complaint (no brief having been filed by either 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. Respondents, Edward Shill and Sanford C. Chesick, are individuals trading and doing business under the name of The Cheshill Manufacturing Co., with their principal place of business located at 501 Seventh Avenue, New York, N. Y.

PAR. 2. Respondents, Edward Shill and Sanford C. Chesick, have been since March 27, 1937, engaged in the sale and distribution of a chain door lock device equipped with a so-called safety bell, which were sold under the name "Safety-Bell Chain Lock." Respondents cause their product when sold by them to be transported from their aforesaid place of business in the State of New York to the purchasers thereof located in various other States of the United States and the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said "Safety-Bell Chain Lock" device 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 product, respondents, by means of advertising matter printed on letter-heads, bill-heads, and on cartons containing their said product, and by other means, have falsely represented that they are manufacturers of said "Safety-Bell Chain Lock" device and other patented protective devices.

Respondents further, in the course and conduct of their said business, have sold and distributed said locks with the legend "Pat. Pend." stamped or braised in raised letters on the metal base thereof.

Among and typical of the representations contained in said false advertisments so used and disseminated, as aforesaid, are the following:

The Cheshill Manufacturing Co.
Manufacturers of
Patented Protective Devices
501 Seventh Avenue
New York, N. Y.

Safety Bell Chain Locks
The Automatic Burglar Alarm.
Manufactured and Guaranteed By
Cheshill Manufacturing Co.
501 Seventh Ave., New York, N. Y.

Cheshill Company, New York, N. Y.
Pat. Pend.

In the manner aforesaid, respondents represent and imply that the safety devices offered for sale and sold by them are patented and that an application for patent on said "Safety Bell Chain Lock" device or some of the parts thereof is pending in the United States Patent Office, and that respondents are the manufacturers of said products.

Through the use of the word "manufacturing" in the trade name "The Cheshill Manufacturing Co.," respondents represent that they are the manufacturers of the products offered for sale and sold by them.

PAR. 4. The representations made and used by the respondents as set out in paragraph 3 hereof are grossly exaggerated, misleading and untrue. In truth and in fact respondents are in no sense the manufacturers of any of said products. They do not own, operate, or control any factory wherein any of said products are made or manufactured.

Respondents are not the holders of letters patent on said "Safety Bell Chain Lock" device or any protective devices or other articles of commerce, and they have not applied for a patent for their said "Safety Bell Chain Lock" device or any of the parts thereof, nor do they have any such application pending.

PAR. 5. There is a common belief among wholesalers, retailers, and members of the purchasing public that a superior grade of merchandise can be secured by purchasing direct from the manufacturer thereof, and at a considerable saving in price due to the elimination of the middleman's profit and for other reasons, and that a patented product, or one for which an application for patent is pending, is a superior product and one to be preferred over a nonpatented article or one for which an application for patent has not been made.

PAR. 6. The use by the respondents of the word "manufacturing" in their trade name and of the other representations and implications

aforesaid, has the tendency and capacity to, and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that respondents are the manufacturers of protective devices and that they manufacture said "Safety Bell Chain Lock" device in a factory owned, operated or directly and absolutely controlled by them, and that said lock device is patented or that an application for patent is pending for said lock device or some of the parts thereof. As a result of such erroneous and mistaken belief, a substantial number of members of the purchasing public have purchased a substantial volume of respondent's said "Safety Bell Chain Lock" device in commerce between and among the several States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are 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, 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, and brief in support of the allegations of the complaint, no brief having been filed or oral argument requested by respondents' counsel, 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, Edward Shill and Sanford C. Chesick, individually, and trading as The Cheshill Manufacturing Co., or any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of a chain door lock device, designated, and sold under the name, "Safety Bell Chain Lock," or any other such device or product whether sold under that name or some 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 "manufacturing" or any other word or words of similar import and meaning as a part of the trade or corporate name under which the respondents conduct their business, unless and until such respondents actually own and operate or directly and absolutely control a manufacturing plant wherein the products offered for sale and sold by them are manufactured.

2. Representing that respondents are the manufacturers of said "Safety Bell Chain Lock" device, or any other safety device, or any other product.

3. Representing that said "Safety Bell Chain Lock" device, or any other safety device, is patented or that an application for patent for such device is pending, when such is not the fact.

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

IN THE MATTER OF

A. F. DUVERGER, DOING BUSINESS AS NATIONAL DISTRIBUTORS AND INCOME AUDIT SERVICE

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

Docket 3616. Complaint, Sept. 30, 1938—Decision, Jan. 23, 1941

Where an individual engaged in compilation of his "Income Audit Service," comprising a bookkeeping, accounting, or business record system consisting of bound record for recording business transactions, and including so-called free advisory service in which, upon request, he gave advice concerning Federal income tax, social security and accounting questions, and agreement to aid and assist in the preparation and submission of the purchaser's Federal income tax return and to indicate thereon all purchaser's deductions, allowances, exemptions and credits, and in sale and distribution of said "Income Audit Service" to purchasers thereof in other States and in the District of Columbia, upon a down-payment and c. o. d. balance basis, through representatives, salesmen, agents, and canvassers, and through the mails, in active and substantial competition with others engaged in sale and distribution of like or similar systems and service in commerce as aforesaid, and including many who sell and distribute their systems without making any representation that same are offered or sold by Government or that their purchase by user is compulsory or required by law, or that heavy penalties will accrue if person solicited fails to buy same—

(*a*) Represented, directly and indirectly, and impliedly and inferentially, through the mails and through methods employed by his representatives, etc., under his direction, control and supervision, and particularly to small businessmen and including immigrants and poorly educated people, that his representatives, salesmen, agents and canvassers were officers, agents, or representatives of the United States Government and, in particular, of the Income Tax Unit of the Department of the Treasury, and that the purchase and use of a bookkeeping, accounting or business record system, and more particularly, of his said "Income Audit Service", was necessary or required under laws of the United States or under rules, regulations or orders of some department or agency thereof, and that his said "Income Audit Service" emanated from or was sold and distributed under the auspices of United States Government or aforementioned Income Tax Unit; and

(*b*) Represented that his said "Income Audit Service" was the only bookkeeping, accounting or business record system approved by United States Government or said unit, and that all other systems or services in use must be removed and replaced by his said service, and that prospective purchasers who failed to purchase and use his said service or who did not comply with requests or demands of his representatives, etc., as made by them in connection with sale of his said service, would, as result of

such failure to purchase and use said service and of non-compliance with demands of such representatives, etc., subject themselves to arrest or imprisonment;

Facts being, his said representatives, agents, salesmen and canvassers were not officers or agents of, nor in any manner connected with, the United States Government, the Income Tax Unit of the Treasury Department, or any other department or agency of said Government, his "Income Audit Service" was not necessary or required under laws of the United States or under rules, regulations, or orders of any department or agency of the Government, and it did not emanate from, nor was it sold and distributed under the auspices of, the United States Government or any department or agency thereof and no other bookkeeping, accounting or business record system purchased or in use needed to be removed and replaced by his said service, prospective purchasers who did not purchase and use it or comply with request or demand made by his representatives, etc., in connection with sale of such service, would not be subject to arrest or imprisonment, and two canvassers representing him had been convicted of impersonating an officer of the Government while attempting to make sales of said service, and he had received many complaints that his canvassers left the impression with person solicited to subscribe to said service that they were representatives of the Government;

With capacity and tendency, through such false and misleading representations made by him and his representatives in sale and distribution of his said service, to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that all of said representations were true, and with result, as direct consequence of such belief, that number of public purchased substantial volume of his said service, with consequence that trade was unfairly diverted to him from competitors selling and distributing like or similar business record systems who truthfully represent the same; to the injury of competition in commerce:

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

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

Mr. B. G. Wilson for the Commission.

Mr. Joseph C. Turco, 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 A. F. Duverger, an individual, doing business under the names and styles of National Distributors and Income Audit 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. Respondent, A. F. Duverger, is an individual doing business under the names and styles of National Distributors and Income Audit Service, with his principal place of business formerly located at 927 Fifteenth Street NW., Washington, D. C., and now located at 205 Washington Avenue, Riverdale, Md. Said respondent is engaged in the compilation and sale of an Income Audit Service and caused and causes said Service, when sold, to be transported from his principal place of business in Washington, D. C., and Riverdale, Md., to the purchasers thereof located in States of the United States other than the State of Maryland, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade and commerce in the said Income Audit Service sold and distributed by him in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, respondent is in active and substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of like or similar Services or products in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. Respondent's Income Audit Service comprises a bookkeeping, accounting, or business record system consisting of a bound record for recording business transactions. Included in respondent's said Income Audit Service is a free advisory service, wherein respondent, upon request, purports to advise concerning Federal Income Tax, Social Security, and Accounting questions.

Respondent, through said Income Audit Service, further agrees to aid and assist in the preparation and submission of purchaser's Federal Income Tax return and to indicate thereon all proper deductions, allowances, exemptions, and credits.

Respondent's Income Audit Service is sold and distributed through the medium of the United States mails and through the means of representative salesmen, agents, and canvassers.

PAR. 4. In the course and conduct of respondent's business, and for the purpose of inducing the purchase of said Income Audit Service, respondent directly, indirectly, impliedly, and inferentially, through the medium of the United States mails and through the means and by the use of methods employed by appointed representative salesmen, agents, and canvassers under his direction, control, and supervision, has made many representations to prospective purchasers in the

solicitation and sale of the said Income Audit Service, among which are the following:

1. That respondent's representative salesmen, agents, and canvassers are officers, agents, or representatives of the United States Government and in particular, of the Income Tax Unit, Bureau of Internal Revenue, U. S. Department of the Treasury.

2. That the purchase or use of a bookkeeping, accounting or business record system and, in particular, respondent's Income Audit Service is approved, necessary, required or compulsory under the laws, regulations or orders of the U. S. Government and, in particular, of the Unit, Bureau, and Department aforementioned.

3. That respondent's Income Audit Service emanates from or is sold and distributed under the auspices of the U. S. Government or the aforementioned Unit, Bureau or Department.

4. That respondent's Income Audit Service is the only bookkeeping, accounting or business record system approved, necessary, required or compulsory under the laws, rules, regulations, or orders of the United States Government, the particular unit, bureau, and department aforementioned, and that all other systems or services in use must be removed and replaced by respondent's said Income Audit Service.

5. That prospective purchasers who fail to purchase and use or who do not comply with the requests or demands of respondent's representative salesmen, agents, or canvassers as made in connection with the solicitation, attempted sale, or sale of respondent's Income Audit Service, will as a direct result of such failure to purchase or use or of such noncompliance, be reported, arrested, fined or imprisoned, by respondent's said representative salesmen, agents, or canvassers or subjected to investigation and penalties by the United States Government or the particular unit, bureau, and department aforementioned.

PAR. 5. The said representations as made by respondent in the manner and method as hereinabove set out in paragraph 4 are false, misleading, and untrue.

In truth and in fact, respondent's representative salesmen, agents, and canvassers are not officers or agents nor are they in any manner whatsoever connected with or representative of the United States Government or, in particular, of the Income Tax Unit, Bureau of Internal Revenue, United States Department of the Treasury. Respondent's Income Audit Service is not approved, necessary, required, or compulsory under the laws, rules, regulations, or orders of the United States Government, or the particular unit, bureau, and department aforementioned. Respondent's Income Audit Service does not emanate from, nor is it sold and distributed under the

auspices of the said United States Government, unit, bureau, or department aforementioned. No other bookkeeping, accounting or business record system purchased or in use need be removed and replaced by said Income Audit Service, as represented by respondent. Prospective purchasers who do not purchase, use or comply with the requests or demands made by respondent's representative salesmen, agents, and canvassers in connection with the solicitation, attempted sale or sale of respondent's Income Audit Service will not, as a result of such noncompliance or failure to purchase and use, be reported, arrested, fined or imprisoned by respondent's representative salesmen, agents, or canvassers or subjected to investigation and penalties by the United States Government or any of its departments, bureaus, or units, as represented and indicated by the respondent.

PAR. 6. There are among respondent's competitors, as described in paragraph 2 herein, many who sell and distribute like or similar services or products who do not misrepresent their respective services or products or matters pertaining thereto.

PAR. 7. Each and all of the false and misleading representations made by respondent in the sale and distribution of his Income Audit Service as hereinabove set out have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations are true. As a direct result of this erroneous and mistaken belief a number of the public have purchased a substantial volume of the respondent's product with the result that trade has been unfairly diverted to respondent from competitors engaged in selling and distributing like or similar services or products who truthfully represent the same.

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 September 30, 1938, issued and subsequently served its complaint in this proceeding upon respond-

ent, A. F. Duverger, an individual, doing business under the names and styles of National Distributors and Income Audit Service, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint and in opposition thereto were introduced before examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint (respondent not having filed 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, A. F. Duverger, is an individual doing business under the names and styles of National Distributors and Income Audit Service, with his principal place of business formerly located at 927 Fifteenth Street NW., Washington, D. C., and now located at 3402 Rhode Island Avenue, Mt. Rainier, Md. Said respondent is engaged in the compilation and sale of a business record system and service, known as, and sold under the name, Income Audit Service, and caused and causes said service, when sold, to be transported from his principal place of business in Washington, D. C., and Mt. Rainier, Md., to the purchasers thereof located in States of the United States other than the State of Maryland and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said income audit service in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, respondent is in active and substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of like or similar systems and service in commerce among and between the various States of the United States and in the District of Columbia. There are many of these competitors who sell and distribute their systems without any representation that their

systems are being offered for sale or sold by the Government, or that their purchase by the user is compulsory or is required by law, or that heavy penalties will accrue if the person solicited fails to buy their said systems.

PAR. 3. Respondent's Income Audit Service comprises a bookkeeping, accounting, or business record system consisting of a bound record for recording business transactions. Included in respondent's said Income Audit Service is a so-called free advisory service, wherein respondent, upon request, gives advice concerning Federal income tax, social security, and accounting questions. Respondent through said income audit service further agrees to aid and assist in the preparation and submission of the purchaser's Federal income tax return and to indicate thereon all proper deductions, allowances, exemptions, and credits. Respondent's Income Audit Service is sold through the means of representatives, salesmen, agents, and canvassers; and distributed through the medium of the United States mails. The price for a 1-year subscription to respondent's Income Audit Service is $7.50, of which $3 is paid to the canvasser at the time he takes the order. The $4.50 balance is collected by the postal authorities on delivery of said service. During the year 1937 respondent sold his said service to about three thousand subscribers.

PAR. 4. Respondent, in the course and conduct of his business, and for the purpose of inducing the purchase of said Income Audit Service, directly, indirectly, impliedly and inferentially, through the medium of the United States mails and through the means and by the use of methods employed by appointed representatives, salesmen, agents, and canvassers under his direction, control, and supervision, has made many representations to prospective purchasers, particularly to small businessmen, including immigrants and poorly educated people, among which are the following:

1. That respondent's representatives, salesmen, agents, and canvassers are officers, agents, or representatives of the United States Government and, in particular, of the Income Tax Unit of the Department of the Treasury.

2. That the purchase and use of a bookkeeping, accounting or business record system, and, more particularly, of respondent's said Income Audit Service, is necessary or required under the laws of the United States or under the rules, regulations, or orders of some department or agency thereof.

3. That respondent's Income Audit Service emanates from or is sold and distributed under the auspices of the United States Government or the aforementioned Income Tax Unit.

4. That respondent's said Income Audit Service is the only bookkeeping, accounting, or business record system approved by the United States Government or said Income Tax Unit, and that all other systems or services in use must be removed and replaced by respondent's said Income Audit Service.

5. That prospective purchasers who fail to purchase and use respondent's said Income Audit Service or who do not comply with the requests or demands of respondent's representatives, salesmen, agents, or canvassers as made by them in connection with the sale of respondent's said Income Audit Service will, as a result of such failure to purchase and use said service and of noncompliance with the demands of such representatives, salesmen, agents or canvassers subject themselves to arrest or imprisonment.

PAR. 5. The said representations as made by respondent in the manner and method as hereinabove set out in paragraph 4 are false, misleading, and deceptive. The Commission finds that respondent's representatives, agents, salesmen, and canvassers are not officers or agents of, nor are they in any manner connected with, the United States Government, the Income Tax Unit of the Department of the Treasury, or any other department or agency of the United States Government. Respondent's said Income Audit Service is not necessary or required under the laws of the United States or under the rules, regulations or orders of the Income Tax Unit of the Department of the Treasury or any other department or agency of the United States Government. Respondent's Income Audit Service does not emanate from, nor is it sold and distributed under the auspices of, the United States Government, or any department or agency thereof. In fact, no other bookkeeping, accounting or business record system purchased or in use need be removed and replaced by respondent's said Income Audit Service. Prospective purchasers who do not purchase and use Income Audit Service or comply with the request or demand made by respondent's representatives, salesmen, agents and canvassers in connection with the sale of respondent's Income Audit Service will not, as a result of such failure to purchase and use said Income Audit Service or comply with the request or demand of said representatives, salesmen, agents, and canvassers, be subject to arrest or imprisonment.

PAR. 6. Two canvassers representing respondent have been convicted of impersonating an officer of the United States Government while attempting to make sales of respondent's Income Audit Service, and respondent has received many complaints that his canvassers leave the impression with the person solicited to subscribe to said service that they are representatives of the United States Government.

PAR. 7. All of the representations made by respondent and his representatives in the sale and distribution of his Income Audit Service are false and misleading, and, as described above, have the capacity and tendency 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 public have purchased a substantial volume of respondent's said Income Audit Service, with the result that trade has been unfairly diverted to respondent from competitors, engaged in selling and distributing like or similar business record systems, who truthfully represent the same. 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before examiners of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (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 respondent, A. F. Duverger, an individual, 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 so-called income audit service, sold and distributed under the name Income Audit Service, or any bookkeeping, accounting or business record system whether sold under the name Income Audit Service or any other name in commerce, as commerce

is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's agents, salesmen or canvassers are officers, agents, or representatives of, or that they are in any manner connected with, the United States Government or any department or agency thereof.

2. That respondent's bookkeeping, accounting, business record system or income audit service is necessary or required under the laws of the United States or under the rules, regulations, or orders of any department or agency thereof; or that all other income tax record systems or services must be replaced by respondent's said system or service.

3. That respondent's bookkeeping, accounting, business record system, or income audit service is produced by or sold and distributed under the direction of the United States Government or any department or agency thereof.

4. That prospective purchasers who fail to purchase and use respondent's said income audit service or record keeping system will be subject to arrest or imprisonment because of their failure to purchase and use said services.

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

IN THE MATTER OF

SCIENTIFIC MANUFACTURING COMPANY, INC., AND HOWARD J. FORCE, INDIVIDUALLY AND AS PRESIDENT THEREOF

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

Docket 3874. Complaint, Aug. 18, 1939—Decision, Jan. 23, 1941

Where a corporation, which was a closed one wholly owned by a certain individual and family, and said individual, who was its president and controlled and directed its activities, practices, and policies, and used same as an instrumentality and means whereby and through which he conducted the business and performed and caused to be performed the acts and things below described, engaged in writing and publishing, for sale and distribution, two pamphlets which were designated and entitled by them "Poisons Formed By Aluminum Cooking Utensils" and "Are You Heading For 'The Last Round-Up'?," and which were devoted to an exposition of the claimed dangers attendant in use of aluminum utensils for preparation and storage of foods for human consumption, and the claimed deleterious effects which result from eating foods prepared or stored in such utensils, and which pamphlets, offered, sold, and distributed by them through and by the mails and otherwise to the public and to various manufacturers, distributors, dealers, and salesmen of cooking and storage utensils made of materials other than, and competitive with, utensils made of aluminum, as used and distributed to public by them and parties referred to, had induced and were likely to induce prospective purchasers and purchasers to buy cooking and storage utensils made of materials other than and competitive with aluminum utensils—

(*a*) Represented and caused to be represented, among other things, that aluminum is a poisonous metal and that use of aluminum utensils for preparation, cooking, or storage of foods is unsafe, deleterious, disease producing, poisonous, death dealing, and otherwise dangerous to health because of the aluminum imparted to foods during such processes and resulting absorption and accumulation of such metal in the system of the consumer of foods so prepared, cooked or stored;

(*b*) Represented, further, as aforesaid, that aluminum utensils are manufactured of a soft metal, that such utensils easily become corroded and pitted when used for cooking and tend to provide lodgment for food particles which operate as culture media for bacteria and spores, both poisonous and otherwise; and

(*c*) Represented, as aforesaid, that the consumption of food prepared, cooked or stored in aluminum utensils will cause cancer, Bright's Disease, diabetes, liver trouble, indigestion, constipation, ulcers, carbuncles, nervousness, and death from poisoning;

Facts being extensive scientific investigations have failed to disclose any evidence that food prepared or stored in aluminum utensils is unsafe, deleterious, disease producing, poisonous or otherwise dangerous to health, substance in

question is most abundant of earth's metallic elements, found in practically all animal and vegetable tissue and in all foods and ordinary drinking water, and, in many instances, in greater amounts than that found in foods after being cooked or stored in such utensils, and neither small quantities of aluminum which may be absorbed in food from being cooked or stored in such utensils and ingested into the system by consumption of such food, nor any of its compounds which may be formed thereby, are toxic in effect or injurious to health, and aluminum thus ingested has no cumulative effect in system, but is readily eliminated by normal processes of the body, consumption of food prepared or kept in said utensils will not cause diseases, ailments, or conditions above set forth, or any other disease or ailment, and corrosion or pitting of such utensils, where properly used, is not sufficient to impair their chemical integrity for long periods of time, aluminum used therein, not being soft, but rather very hard, metal developed to be resistant to chemical abuse or corrosion through cooking or storing of foods, such utensils are used daily by many of nation's leading hospitals, Army and Navy, Veterans' hospitals, Civilian Conservation Camps, and millions of American homes, and studies by public health authorities and scientists in Germany, France, England, Scotland, and Switzerland as well, have failed to discover any scientific basis for belief that food prepared, cooked, or stored in aluminum utensils is harmful because of such procedure;

With effect, through use of such false, misleading, and disparaging statements and representations made by said corporation and individual in their pamphlets, as above set forth, of misleading and deceiving substantial portion of purchasing public into false and erroneous belief that cooking utensils made from aluminum are undesirable and harmful and dangerous to consumers of food prepared or stored therein, and that all of said statements and representations with reference to said aluminum utensils are true, and with result, through sale of such pamphlets to manufacturers, distributors, dealers, and salesmen of cooking utensils made from materials other than aluminum, of placing in the hands of such persons a means and instrumentality by which uninformed or unscrupulous manufacturers, distributors, dealers, and salesmen might deceive or mislead members of purchasing public and induce them to purchase utensils made from materials other than aluminum:

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. Wilbur N. Baughman and *Mr. E. P. Schrup* for the Commission.

Mr. Howard J. Force, of Scranton, 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 Scientific Manufacturing Co., Inc., a corporation, and Howard J. Force, individually, and as

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

PARAGRAPH 1. Respondent, Scientific Manufacturing Co., Inc., is a corporation created by, and existing under the laws of the State of Pennsylvania, with its principal office and place of business located at 426 Prescott Avenue, Scranton, Pa.

Respondent, Howard J. Force of 1724 Vine Street, Scranton, Pa., is the president of respondent Scientific Manufacturing Co., Inc., a corporation, and controls and directs the activities, practices, and policies of said corporate respondent in the course and conduct of its business, and in doing the acts and things hereinafter described. Respondent, Howard J. Force, uses the respondent Scientific Manufacturing Co., Inc., as an instrumentality and means through which he conducts the business and does the acts and things hereinafter described.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the writing and publishing, and in the sale and distribution of certain pamphlets designated (*a*) "Poisons Formed by Aluminum Cooking Utensils," and (*b*) "Are You Heading for the Last Round Up." Both of said pamphlets are devoted to an exposition of the claimed dangers in the use of aluminum utensils in the preparation and storage of foods for human consumption, and in the claimed deleterious effects which result from eating foods prepared or stored in aluminum utensils. Respondents sell said pamphlets principally to manufacturers, distributors, dealers, and salesmen of cooking utensils made from materials other than and competitive with aluminum, and said pamphlets are used by such manufacturers, distributors, dealers, and salesmen in connection with the sale of said cooking utensils. Respondents cause said pamphlets, when sold, to be transported from their place of business in the State of Pennsylvania to the purchasers thereof located at various points in the several States of the United States and in the District of Columbia.

There is now, and has been at all times mentioned herein, a course of trade in commerce in said pamphlets among and between the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, and through the aforesaid pamphlets, the respondents have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false and misleading statements and representations concerning aluminum cooking utensils, for the purpose of inducing,

and which are likely to induce, directly or indirectly, the purchasing of cooking utensils made from materials other than aluminum.

Among and typical, but not all inclusive, of the false and misleading statements and representations contained in said pamphlets disseminated and caused to be disseminated, as aforesaid, are the following:

People often say that they have used aluminum for years and it has not poisoned them. Many people have taken large doses of various poisons, trying to commit suicide, but in some cases the poisons did not produce. Never-the-less, they were poisonous compounds just the same.

Various books on medicine and the U. S. Dispensatory state that arsenic, mercury, carbolic acid, oxolic acid, aluminum lead, strychnine, etc. are poisonous. None of these recommendations as to their poisonous properties would be questioned in a court at law, although many will admit they have serious stomach trouble, often ulcers of the stomach, cancers, liver troubles, skin affections, etc. Most of these conditions improve when aluminum wares are discontinued.

A friend of mine after having 17 carbuncles, threw out his fancy aluminum ware. The carbuncles disappeared.

Another fed his dog from an aluminum dish; the dog died from a cancer of the face.

Two others each gave a dozen young ducks water in aluminum pans and all the ducks died in less than two weeks.

But aluminum is different. It acts more in the nature of a cumulative poison. In a number of cases where people have died under hospital care and where aluminum was used almost exclusively, autopsies have shown that aluminum was present in the brain, kidneys and liver in sufficient quantity in my judgment to cause death.

The combination of aluminum chloride with aluminum acetate would make an ideal disinfectant and embalming fluid. This combination could easily be brought about by adding salt to pickles when they are prepared in aluminum.

Many cases of poisoning have resulted from sauerkraut being cooked in aluminum, and some deaths.

Are you eating rat poison?

Large doses of aluminum compounds are often fatal. Small quantities may be taken daily with little or no effect. But sooner or later, indigestions, constipation, Bright's disease, or diabetes may develop as a result of the continued use of aluminum ware, due to its solubility.

From the Dispensatory and various Materia Medicas, it is apparent that the nation is being poisoned (by aluminum). There never was so much sickness and complaining, never so much stomach disorder, etc. Cancer has jumped from the tenth place to the second place as the cause of death * * *

Cancer has increased in Austria in proportion to the increased use of aluminum ware.

The information which has been given in this circular, and from a most reliable source, should justify us in never allowing any aluminum under any circumstances to enter our bodies from artificial sources. Why, even the suspicion that it might be poisonous ought alone to be sufficient.

Many people have the impression that poisons should have a bitter or very unpleasant taste. This is true in some cases, such as strychnine, but with

aluminum compounds there is little or no taste. That is one reason why some believe aluminum is not poisonous.

From our investigation we recommend: iron, steel and stainless steel utensils, also agate, enamel and earthenware. You will notice that foods have a different taste when they are not cooked in aluminum.

Remember, the continued use of aluminum wares will finally produce results which will be similar to leaving the foods standing in them for some time. It is the small quantities, as the Dispensatory points out, which are absorbed from the foods, which may produce indigestion, nervousness, constipation, cancer, etc.

My circular, "Are You Heading For The Last Round Up," shows the possibility of poisonous bacteria remaining and developing in pitted aluminum utensils.

Did you ever find maggots in your aluminum pans?

Almost daily you read in the press of hundreds being poisoned by eating food cooked in aluminum.

It is well known that many cases of food poisoning can be traced to various kinds of food prepared in aluminum.

Three men from the Navy poisoned by eating fried oysters. One dies * * * The oysters may have been kept in aluminum.

I have been told that the government is throwing all aluminum utensils out of the Navy.

Some doctors think infantile paralysis may start from a throat condition, others that it starts in the intestinal tract. How could you expect a child to keep well if fed daily from aluminum pans * * *

Some have died soon after eating food from aluminum utensils.

Laws should be passed prohibiting the manufacture of aluminum ware for use in preparing any kind of food products and medical preparations.

A doctor wrote me that he had a cancer on his face. He stopped using aluminum, and in a few months the cancer nearly disappeared. Then he ate squash, cooked in aluminum. In 48 hours it was like a raging volcano.

Two well-known cancer surgeons died last year from cancer. They said they used aluminum.

Cancer patients should avoid all kinds of aluminum wares; also all food products which may be prepared in aluminum.

A doctor here in Scranton told me he had aluminum poisoning. He died three weeks later.

I would caution against eating in hotels and restaurant where aluminum utensils are used.

The representations hereinbefore set out, and other representations similar thereto but not set out herein, appearing in respondents' aforesaid pamphlets are false, misleading and untrue, and unfairly defame and disparage cooking utensils made from aluminum. Aluminum cooking utensils are not unsafe, poisonous, nor deleterious to mankind when properly used in the preparation or keeping of foods for human consumption. Nor will the proper use thereof cause ulcers, diabetes, cancer, and the various other ailments, afflictions, and diseases of mankind named by the respondents in said pamphlets; nor will the proper use thereof cause the death of the user.

In truth and in fact, aluminum is the most abundant metallic element in nature and is found in all foods and ordinary drinking water. Aluminum in contact with foods causes no deleterious contamination. In the quantities in which aluminum is absorbed in food from being cooked or stored in aluminum utensils and ingested into the human system by the consumption of such food, neither aluminum nor any of its compounds which may be formed thereby, are toxic in effect or deleterious to the health, nor do they cause cancer, cancerous growths, ulcers, or any other disease or ailment, nor the death of the user. There is no scientific evidence that aluminum as ingested into the human system in food causes cancer or contributes to the cause of cancer, or aggravates or increases the rate of growth of cancer. The amounts of aluminum found in foodstuffs, under conditions most favorable for its accumulation, are inadequate to account for any of the irritations preceding cancer. Aluminum utensils are extensively used in hospitals without deleterious effects in the preparation of foods for patients suffering from cancer, ulcers, diabetes, and other ailments, afflictions, and diseases mentioned by the respondents in said advertising matter. None of the known underlying causes of cancer, ulcers, diabetes, and the various other ailments, afflictions, and diseases mentioned by the respondents' said advertising matter have any relationship or connection with aluminum or its ingestion into the human system in food.

PAR. 4. The respondents, through the sale of said pamphlets to manufacturers, distributors, dealers, and salesmen of cooking utensils made from materials other than aluminum, place in the hands of others an instrumentality through which the public is misled and deceived into the erroneous and mistaken belief that the aforesaid statements and representations are true, and through such instrumentality a substantial portion of the purchasing public, because of the erroneous and mistaken belief engendered thereby, is induced to purchase cooking utensils made from materials other than aluminum.

PAR. 5. 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 18th day of October 1939, issued and subsequently served its complaint in this proceeding upon respondents, Scientific Manufacturing Co., Inc., a corporation, and Howard J. Force, individually, and as president of Scientific Manufacturing Co., Inc., charging them with the use of unfair and decep-

tive 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 Wilbur N. Baughman, attorney for the Commission, and in opposition to the allegations of the complaint by Howard J. Force, respondent, before John W. Addison, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint, 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, Scientific Manufacturing Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 426 Prescott Avenue, in the city of Scranton, State of Pennsylvania.

Respondent, Scientific Manufacturing Co., Inc., is a closed corporation wholly owned by Howard J. Force and family, and respondent Howard J. Force, as its president, controls and directs the activities, practices, and policies of the said corporate respondent. Said respondent Howard J. Force uses the respondent Scientific Manufacturing Co., Inc., as an instrumentality and means whereby and through which he conducts the business and performs and causes to be performed the acts and things hereinafter described.

PAR. 2. Respondents, Scientific Manufacturing Co., Inc., and Howard J. Force, are now and for more than one year last past have been engaged in the business of writing and publishing for sale and distribution to the public certain pamphlets designated and entitled by respondents as:

(a) POISONS FORMED BY ALUMINUM COOKING UTENSILS;

(b) ARE YOU HEADING FOR "THE LAST ROUND-UP?"

Said pamphlets are devoted to an exposition of the claimed dangers attendant in the use of aluminum utensils for the preparation and

storage of foods for human consumption, and in the claimed deleterious effects which result from the eating of foods prepared or stored in such utensils.

Respondents in the course and conduct of their business as aforesaid have offered for sale, sold, and distributed many such pamphlets through and by means of the United States mails and otherwise, to the public and to various manufacturers, distributors, dealers, and salesmen of cooking and storage utensils made of materials other than and competitive with utensils made of aluminum. Said pamphlets as used and distributed to the public by respondents and said parties have induced and are likely to induce prospective purchasers and purchasers to buy cooking and storage utensils made of materials other than and competitive with utensils made of aluminum.

Respondents in the course and conduct of their business, as aforesaid, have caused and are causing said pamphlets when sold to be transported from their place of business in the State of Pennsylvania to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents, Scientific Manufacturing Co., Inc., and Howard J. Force, now maintain, and at all times mentioned herein have maintained, a course of trade in said pamphlets so sold and distributed in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in said pamphlets so offered for sale, sold, and distributed as aforesaid, represent and have caused to be represented, among other things, that aluminum is a poisonous metal and that the use of aluminum utensils for the preparation, cooking, or storage of foods is unsafe, deleterious, disease producing, poisonous, death dealing, and otherwise dangerous to health because of the aluminum imparted to foods during such processes and the resulting absorption and accumulation of such metal in the system of the consumer of foods so prepared, cooked, or stored; and further that aluminum utensils are manufactured of a soft metal, that such utensils easily become corroded and pitted when used for cooking, and tend to provide lodgment for food particles which operate as culture media for bacteria and spores, both poisonous and otherwise. By the same means the respondents represent that the consumption of food prepared, cooked, or stored in aluminum utensils will cause cancer, Bright's disease, diabetes, liver trouble, indigestion, constipation, ulcers, carbuncles, nervousness, and death from poisoning.

PAR. 4. In truth and in fact extensive scientific investigations have failed to disclose any evidence that food prepared or stored in

aluminum utensils is unsafe, deleterious, disease producing, poisonous or otherwise dangerous to health. Aluminum is the most abundant of the earth's metallic elements and is found in practically all animal and vegetable tissue and in all foods and ordinary drinking water, and in many instances in greater amounts than that found in foods after being cooked or stored in aluminum utensils. Neither the small quantities of aluminum which may be absorbed in food from being cooked or stored in aluminum utensils and ingested into the human system by the consumption of such food, nor any of its compounds which may be formed thereby, are toxic in effect or injurious to health. Aluminum so ingested has no cumulative effect in the system but is readily eliminated by the normal processes of the body. The consumption of food prepared or kept in aluminum utensils will not cause cancer, Bright's Disease, diabetes, liver trouble, indigestion, constipation, ulcers, carbuncles, nervousness, poisoning, or any other disease or ailment of the human body. Corrosion or pitting of aluminum cooking and storage utensils, where properly used, is not sufficient to impair their chemical integrity for long periods of time, as the aluminum as used in such utensils is not a soft metal but rather a very hard metal developed to be resistant to chemical abuse or corrosion by foods cooked or stored therein. Aluminum cooking and storage utensils are daily being used by many of the nation's leading hospitals, the Army and Navy, the United States Veterans' hospitals, Civilian Conservation Camps, and millions of American homes, and studies by public health authorities and scientists in Germany, France, England, Scotland and Switzerland as well have failed to discover any scientific basis for the belief that food prepared, cooked or stored in aluminum utensils is harmful because of such procedure.

PAR. 5. The aforesaid false, misleading, and disparaging statements and representations made by the respondents in their pamphlets, as hereinabove described, have had and now have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that cooking utensils made from aluminum are undesirable and harmful and are dangerous to the consumers of food prepared or stored in said aluminum utensils, and that all of said statements and representations with reference to said aluminum utensils are true.

The respondents, through the sale of said pamphlets to manufacturers, distributors, dealers and salesmen of cooking utensils made from materials other than aluminum place in the hands of such persons a means and instrumentality by means of which uninformed or

unscrupulous manufacturers, distributors, dealers and salesmen may deceive or mislead members of the purchasing public and induce them to purchase utensils made from materials other than aluminum.

CONCLUSION

The 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 answers of the respondents, testimony and other evidence taken before John W. Addison, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the complaint, respondents not having filed brief and oral argument not having been requested, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Scientific Manufacturing Co., Inc., and its officers, and Howard J. Force, individually and as president of the Scientific Manufacturing Co., Inc., 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 pamphlets in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the use of food prepared or kept in aluminum utensils is dangerous to the health of the consumer.

2. Representing that the preparation or storage of food in aluminum utensils causes the formation of poisons.

3. Representing that the preparation, cooking or storage of food in aluminum utensils imparts aluminum in quantities sufficient to cause injury to the health of the consumer, or that the aluminum so imparted has a cumulative effect upon the system of the consumer.

4. Representing that aluminum utensils easily corrode or pit and thereby provide lodgment for bacteria and spores, both poisonous and otherwise.

5. Representing that the consumption of food prepared or stored in aluminum containers will cause cancer, Bright's Disease, diabetes, liver trouble, indigestion, constipation, ulcers, carbuncles, nervousness, poisoning, or any other disease or ailment of the human body.

6. Making or causing the making of any false statements or representations with respect to the effect that the consumption of food prepared, cooked or stored in such utensils might have, or has had, on the health of the consumer or consumers of such foods, which statements unfairly disparage the quality, value or use of aluminum cooking or storage utensils.

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

WALLACE BROWN, INC.

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

Docket 4312. Complaint, Sept. 12, 1940—Decision, Jan. 23, 1941

Where a corporation engaged in sale and distribution of greeting cards to purchasers in various other States and in the District of Columbia, and, as thus engaged, in contacting prospective agents to market such cards through advertisements in various newspapers and magazines of national circulation which were placed, as far as possible, under such classifications as "Sales Help Wanted" and bore such captions, among others, as "CHRISTMAS CARDS FASTEST SELLING LINE IN 18 YEARS," "Saleswomen CHRISTMAS CARDS MIRACLE LINE," etc., and in sending to those answering and requesting samples, sample illustrative portfolio and also salable merchandise consisting of, usually, its so-called "Golden Value" 21-card box assortment retailing at $1.00, together with so-called "Statement" from it, which, following its address, read "For 1 'Golden Value' Christmas Card Box Assortment (Retail Value $1.00) * * * 50¢," followed by words "THIS IS NOT A BILL—Please Read: * * * is sent to you on approval * * *," and advice to reader that by order of 12 boxes of any kind of it at its regular wholesale prices, assortment in question became reader's property, and request, in event he should be unable to sell such box, to return same to it or, if he wished to keep it, to send 50 cents "in payment of this statement"—

Made use of such words as "SAMPLES FREE" in such contact advertisements as above referred to, facts being said 21-card "Golden Value" assortment sent on approval by it as above set out, was not in fact "free" or a "free sample," since consideration either in payment of money or rendering of services was required of person receiving such merchandise which, thus, was not delivered without cost or unconditionally;

With tendency and capacity to deceive some members of public and induce them, not anticipating or intending to obligate themselves either to pay for merchandise or to perform services in lieu thereof or return such merchandise, to request sending of such "free samples," and with result that many members of public, and especially those who had not previously acted as agents for it, replied to its said advertisements by requesting the shipment of the "free samples" mentioned therein, and there was imposed thereon, through shipment of unwanted merchandise in delivery thereto of said 21-card box assortments as above described, constraint either to pay for the goods thus shipped or return same or perform services in lieu thereof, and many members of public to whom said assortments were shipped in response to inquiries as above set forth, and without their permission and knowledge on their part as to terms and conditions imposed by it as above described, paid to it sum of money indicated as purchase price, and some

returned same to it or performed services required by it in lieu of payment therefor:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Shaffer & Pierson, 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 Wallace Brown, 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, Wallace Brown, Inc., is a New York corporation with its principal office and place of business at 225 Fifth Avenue, New York, N. Y. It is now, and for several years last past has been, engaged in the business of selling and distributing greeting cards. Said respondent, being engaged in business as aforesaid, causes said greeting cards, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said greeting cards 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 said greeting cards, respondent has contacted dealers for the marketing thereof, by means of advertisements published in various magazines and newspapers of national circulation. The following advertisements are typical of those so used:

CHRISTMAS CARDS
FASTEST SELLING LINE
IN 18 YEARS

Don't experiment. Earn more with vast selection, nationally known, magnificent personal cards, personal stationery. Also 7 thrilling box assortments! "Golden Value" 21-card $1 assortment, 65¢ religious box. Funniest humorous

asst; gift wrappings, etchings, others. Profits up to 100%. Experience unnecessary. Easy to start. Samples free. Wallace Brown, 225 Fifth Ave. Dept. 1007, New York.

Saleswomen
CHRISTMAS CARDS
MIRACLE LINE
Easiest Sellers Thrill America
and Offer Unheard of Earnings
DON'T EXPERIMENT—GET THE BEST

Wallace Brown 1939 Collection of Personal Christmas Cards and Stationery with name imprinted make earning money real fun, because customers are amazed, delighted, with sensational values. Never before so many sparkling new, different cards for so little money. Why work hard? Show this line—MAKE MORE MONEY, faster.

MANY BOX ASSORTMENTS

New "Golden-Value" 21-Card $1 Box Assortment pronounced super-value of season. Your profit 100%. Cash bonus. See for yourself. Also 65¢ Religious Assortment, sensational value. Gift wrappings, Etchings, Humorous, others. Easy. Costs nothing to start. Use spare time. Experience unnecessary. SAMPLES FREE. Call or write today. WALLACE BROWN, INC. 36 S. STATE ST. DEPT. CT.

In response to those persons answering such advertisements and requesting samples, the respondent sends a sample portfolio illustrating various Christmas cards and assortments. In addition thereto, it sends salable merchandise, usually its so-called "Golden-Value" 21-Card Box Assortment retailing at $1, accompanied by a so-called "Statement" reading as

STATEMENT FROM
WALLACE BROWN, INC.
36 S. State Street, Chicago, Ill.
For 1 "Golden-Value" Christmas
Card Box Assortment (Retail Value $1.00) * * * 50¢.

THIS IS NOT A BILL—Please Read: The "Golden-Value" Christmas Greeting Card Assortment is sent to you on approval. As soon as you have ordered only 12 Boxes of any kind at our regular wholesale prices, this box becomes your property, free of a penny cost. Should you be unable to sell for us, kindly return the Box to us. If you want to keep it for personal use, send us only 50¢ in payment of this statement. You save 50¢.

PAR. 3. In truth and in fact, respondent's practice of advertising "free samples" and then sending in addition unsolicited shipments of invoiced goods to persons merely requesting the samples offered as "free" is inherently misleading, deceptive and unfair. All the

goods actually received are not free, and a wholly unexpected demand is thereby imposed upon the inquirer, to pay for said unsought merchandise, by cash or services, or else return the same.

The 21-Card "Golden-Value" Christmas Greeting Card Assortment sent by respondent on approval as hereinbefore set out is not in fact "free" or a "free sample," since a consideration, either the payment of money or the rendering of services, is required of the person receiving said merchandise. The advertisement by respondent of "free samples" or any other use of the word "free" or similar expression in a manner purporting to be a gift or gratuity has a tendency and capacity to deceive members of the public and to induce them to request the sending of such free samples. They do not thereby anticipate or intend to obligate themselves either to pay for merchandise or to perform services in lieu thereof or to return said merchandise.

The shipment by respondent of invoiced articles of merchandise to a customer or prospective customer without prior notice of the terms under which said articles are to be sent and permission obtained to make such shipment unfairly and deceptively imposes upon such customer or prospective customer a constraint either to pay for the goods so shipped or to return the same or to perform services in lieu thereof.

Furthermore, many of the individuals to whom the "Golden-Value" 21-Card $1 Box Assortment is sent by respondent in the manner hereinabove set out have remitted to respondent the sum of fifty cents in accordance with the terms of the "Statements." Respondent thereby is enabled to sell its products to many members of the general public and to receive its regular wholesale price therefor in cases where otherwise no sales would have been made. Respondent thereby receives additional revenue and increases its volume of sales to the general public by the use of the aforesaid deceptive sales practices.

PAR. 4. As a result of respondent's false and misleading representations, plans, and methods, as above set-out, members of the public, believing and relying on the truth of said representations, have been induced to buy, and have bought, large quantities and amounts of respondent's greeting cards.

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 12th day of September 1940, issued and served its complaint in this proceeding upon said respondent, Wallace Brown, 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and substitute therefor an amended answer, which amended answer was duly filed in the office of the Commission. 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, Shaffer & Pierson, 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 proceedings without the presentation of arguments or the filing of briefs. Respondent expressly waived 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, amended 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, Wallace Brown, Inc., is a New York corporation with its principal office and place of business at 225 Fifth Avenue, New York, N. Y.

Respondent is now, and for several years past has been, engaged in the business of selling and distributing greeting cards. Said respondent now causes and for more than one year last past has caused said greeting cards, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States other than the aforesaid State of New York, and in the District of Columbia.

There is now and has been during all the times hereinabove stated 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. 2. In the course and conduct of its said business and for the purpose of procuring agents for the sale of said greeting cards, respondent has contacted prospective agents for the marketing thereof by means of advertisements published in various newspapers and magazines of National circulation. Said advertisements, as far as possible, are placed under the classification of "Sales Help Wanted", or some such similar designation or classification. The following advertisements are typical of those so used:

CHRISTMAS CARDS
FASTEST SELLING LINE
IN 18 YEARS

Don't experiment. Earn more with vast selection, nationally known, magnificent personal cards, personal stationery. Also 7 thrilling box assortments! "Golden Value" 21-card $1 assortment, 65¢ religious box. Funniest humorous asst.; gift wrappings, etchings, others. Profits up to 100%. Experience unnecessary. Easy to start. Samples free. Wallace Brown, 225 Fifth Ave. Dept. 1007, New York.

Saleswomen

CHRISTMAS CARDS
MIRACLE LINE

Easiest Sellers Thrill America
and Offer Unheard of Earnings

DON'T EXPERIMENT—GET THE BEST

Wallace Brown 1939 Collection of Personal Christmas Cards and Stationery with name imprinted make earning money real fun, because customers are amazed, delighted with sensational values. Never before so many sparkling new, different cards for so little money. Why work hard? Show this line—MAKE MORE MONEY, faster.

MANY BOX ASSORTMENTS

New "Golden-Value" 21-Card $1 Box Assortment pronounced super-value of season. Your profit 100%. Cash bonus. See for yourself. Also 65¢ Religious Assortment, sensational value. Gift wrappings, Etchings, Humorous, others. Easy. Costs nothing to start. Use spare time. Experience unnecessary. SAMPLES FREE. Call or write today. WALLACE BROWN, INC. 36 S. STATE ST. DEPT. CT.

In response to those persons answering such advertisements and requesting samples, the respondent sends a sample portfolio illustrating various Christmas cards and assortments. In addition there-

to, it sends salable merchandise, usually its so-called "Golden-Value" 21-Card Box Assortment retailing at $1, accompanied by a so-called "Statement" reading as follows:

STATEMENT FROM
WALLACE BROWN, INC
36 S. State Street, Chicago, Ill.
For 1 "Golden-Value" Christmas
Card Box Assortment (Retail Value
$1.00) * * * 50¢

THIS IS NOT A BILL—Please Read: The "Golden Value" Christmas Greeting Card Assortment is sent to you on approval. As soon as you have ordered only 12 Boxes of any kind at our regular wholesale prices, this box becomes your property, free of a penny cost. Should you be unable to sell for us, kindly return the Box to us. If you want to keep it for personal use, send us only 50¢ in payment of this statement. You save 50¢.

PAR. 3. In truth and in fact, the so-called "Golden-Value" 21-Card Box Assortment is not free in that a request is thereupon made upon the inquirer to pay for said merchandise by cash or services, or else return the same. The 21-Card "Golden-Value" Christmas Greeting Card Assortment sent by respondent on approval as hereinbefore set out is not in fact "free" or a "free sample," since a consideration, either the payment of money or the rendering of services, is required of the person receiving said merchandise. The advertisement by respondent of "free samples," or any other use of the word "free" or a similar expression in a manner purporting a gift or gratuity, has a tendency and capacity to deceive some members of the public and to induce them to request the sending of such free samples, in that they may not anticipate or intend to obligate themselves either to pay for merchandise or to perform services in lieu thereof or to return said merchandise.

Many members of the public, especially those who have not previously acted as agents for respondent, have replied to respondent's advertisements hereinbefore set out, by requesting the shipment of the "free samples" mentioned in the advertisements. When respondent complies with such requests by shipping its so-called "Golden-Value" 21-Card Box Assortment on the condition that it be paid for in cash or services or returned to the respondent, such assortment is not in fact "free" or a "free sample," since it is not delivered without cost or unconditionally. Such shipment of unordered merchandise imposes upon the recipient thereof a constraint either to pay for the goods so shipped or to return the same or to perform services in lieu thereof.

Many members of the public to whom said "Golden-Value" Assortment has been shipped in response to inquiries resulting from the aforementioned advertisements, without their permission and without knowledge on their part as to the terms and conditions imposed by respondent, as above set out, have paid to the respondent the sum of money indicated as the purchase price, while some have returned said assortment to the respondent or performed the services required by the respondent in lieu of payment for said assortment.

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 amended 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, Wallace Brown, 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 greeting cards and similar products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the words "free" or "free sample," or any other word or words indicating a gift or gratuity, to designate, describe or refer to merchandise delivered to members of the public which is not delivered without cost and unconditionally.

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

VONNEGUT HARDWARE COMPANY

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

Docket 4344. Complaint, Oct. 10, 1940—Decision, Jan. 23, 1941

Where a corporation engaged in manufacture of its self-releasing fire exit, or panic devices, as known to trade, 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 fire exit latches and devices between and among the various States and in said District—

Discriminated in price between different purchasers buying its said panic devices of like grade and quality, through granting to some purchasers 40 percent discount from list, while contemporaneously granting to other purchasers, competitively engaged with group receiving said discount of 40 percent, 50 percent discount from uniform list price aforesaid;

With result that effect of said discriminations in price, through such differential in prices charged to competing purchasers, for which no justification was affirmatively shown or claimed, had been and might be substantially to injure, destroy, or prevent competition with it, and also with those purchasers who received benefits of said discriminatory prices:

Held, That said corporation, under facts and circumstances set forth, discriminated in price between purchasers of its said fire exit devices, in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. John G. Rauch, of Indianapolis, Ind., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Vonnegut Hardware Co., a corporation, is violating, and since June 19, 1936, has violated the provisions of section 2 (*a*) of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows.

PARAGRAPH 1. Vonnegut Hardware Co., respondent herein, is a corporation organized and existing under the laws of the State of Indiana, with its principal office located at 120 East Washington Street, Indianapolis, Ind. Respondent operates a number of retail hardware stores in Indianapolis, Ind., and also is engaged in the manufacture of

self-releasing fire exit devices and in the distribution and sale thereof. The manufacturing part of respondent's business is conducted under the name "Von Duprin."

PAR. 2. Said respondent causes the Von Duprin devices to be transported for distribution and sale from its manufacturing plant located in Indianapolis, Ind., into and through the various States of the United States to the purchasers thereof located in other States of the United States and in the District of Columbia, and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said Von Duprin devices sold and distributed by respondent between the State of Indiana and various other 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, and during the time herein mentioned has been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of selling and distributing fire exit latches and devices 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, since June 19, 1936, respondent has been, and is now, discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of such purchasers at lower prices than it sells its products of like grade and quality to other of such purchasers who are competitively engaged one with the other in the sale of said products within the United States.

The said discriminations in price are brought about by the respondent granting a 40 percent discount to some of such customers and a 50 percent discount to other of such customers from uniform list prices of such devices.

PAR. 5. The effect of the discriminations in price herein mentioned has been and may be substantially to injure, destroy, or prevent competition with respondent and also with those purchasers receiving the benefit of said discriminatory prices.

PAR. 6. The foregoing acts and practices of said respondent are violations of section 2 (*a*) of the Clayton Act as amended by the Robinson-Patman Act (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 October 12, 1940, issued and served its complaint in this proceeding upon the party respondent named in the caption hereof charging said respondent with violating the provisions of subsection (*a*) of section 2 of said act, as amended.

After the issuance of said complaint, the respondent filed its answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure as to said facts, and expressly waiving the filing of briefs and oral argument.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Vonnegut Hardware Co., is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business located at 120 East Washington Street, Indianapolis, Ind. The respondent is engaged in the manufacture, sale, and distribution of self-releasing fire exit devices, known to the trade as Von Duprin Panic Devices.

PAR. 2. The respondent is now, and has been since June 19, 1936, engaged in the business of selling and distributing its Von Duprin Panic Devices from its plant located in Indianapolis, Ind., into and through the various States of the United States to purchasers thereof located in other States of the United States and in the District of Columbia. There is, and has been at all times herein mentioned, a continuous current of trade and commerce in said Von Duprin Panic Devices.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and has since June 19, 1936, been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of selling and distributing fire exit latches and devices between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business as aforesaid, the respondent, since June 19, 1936, has been and is now discriminating in price between different purchasers buying its Von Duprin Panic Devices of like grade and quality by selling such Von Duprin Panic Devices to some purchasers at lower prices than it sells products of like grade and quality to other purchasers. The discrimination in

price is accomplished by the respondent's granting varying discounts from its uniform price list. To some purchasers the respondent has granted and allowed a 40 percent discount from the uniform list price while at the same time to other purchasers competitively engaged with the group receiving the 40 percent discount, the respondent has granted a 50 percent discount from said uniform list price.

No justification has been affirmatively shown or is claimed by the respondent for the differential in prices charged competing purchasers.

PAR. 5. The effect of the discriminations in price herein mentioned has been, and may be, substantially to injure, destroy, or prevent competition with respondent and also with those purchasers who receive the benefits of said discriminatory prices.

CONCLUSION

Under the facts and circumstances as set forth in the foregoing findings as to the facts, the Commission concludes that the respondent, Vonnegut Hardware Company, a corporation, has, in the sale of its Von Duprin fire exit devices, discriminated in price between purchasers in violation of subsection (*a*) 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 and the answer duly filed by respondent, which answer admits all of the material allegations of the complaint to be true, and waives the taking of further evidence and all other intervening procedure as to said facts, and expressly waives the filing of briefs and oral argument, and the Commission having made its findings as to the facts and conclusion herein, and the Commission having concluded that said respondent has violated the provisions of "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

It is ordered, That the respondent, Vonnegut Hardware Co., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of Von Duprin Panic Devices of like grade and quality in interstate commerce, do forthwith cease and desist:

1. From selling Von Duprin Panic Devices for use or resale within the United States and the District of Columbia to some purchasers at

discounts of 40 percent from a uniform list price while selling to other purchasers at discounts of 50 percent from such uniform list prices.

2. From continuing or resuming such discrimination in price and from otherwise discriminating in price, in manner and degree substantially similar to such discrimination as found by the Commission in paragraph 4 of the findings as to the facts.

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

IN THE MATTER OF

ALEXANDER WEILER AND LILLY GREENSPAN WEILER, DOING BUSINESS AS NEW YORK PREMIUM NOVELTY COMPANY

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

Docket 3579. Complaint, Sept. 10, 1938—Decision, Jan. 24, 1941

Where two individuals engaged in sale and distribution of jewelry, cosmetics, cigarette lighters, electric lamps, razor blades, clocks, and various other articles of merchandise, to purchasers in the various States; in conducting their business as above set forth—

Made use of sales plan or method involving game of chance, gift enterprise or lottery scheme, pursuant to and as a part of which they distributed and caused to be distributed, to representatives and prospective representatives in the various States, between 800,000 and 1,000,000 advertising or sales circulars containing pull card device and depictions of various articles of their merchandise, for sale and distribution to purchasing public under a plan by which determination of which of a number of articles enumerated, together with prices assigned thereto, in said circular, purchaser received, and prices paid by purchaser for such article and whether article having retail value and regular price greater than that designated therefor was thus secured, were determined by lot or chance, in accordance with number disclosed under particular tab of card selected by purchaser, and operator of card was compensated, after sale of all chances and remission of money, through opportunity to select, as premium, from other articles depicted in their said sales or advertising circular, article, or, at his option, by premium in cash which he might deduct from amount remitted; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale and distribution of their said merchandise, in accordance with sales plan or method above set forth, by persons or representatives to whom they furnished or distributed said sales or advertising circulars, containing such pull card devices as above set forth, and who used same in purchasing, selling, and distributing their said merchandise in accordance with such plan or method as above described, and notwithstanding "Notice to Purchaser" on each pull tab device advising reader that he had option of buying from holder of the book any article listed thereon at price shown, and under which sales plan or method facts as to whether purchaser received article of greater retail value than price designated therefor on tab, and which of said articles he received, and amount of money which he was required to pay therefor, were determined wholly by lot or chance, and benefits of which method said individuals reaped, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with those who are unwilling to use said or any other sales plan or method involving game of chance, gift enterprise, or lottery scheme, or any other sales plan or method which is contrary to public policy, and refrain therefrom;

With the result that, because of said element of chance involved in said sales plan or method employed by said individuals as above set forth, many persons were induced to buy and sell their said merchandise in preference to that offered for sale and sold by competitors, and with consequence that substantial trade was diverted to them from their said 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. Randolph Preston*, trial examiner.

Mr. D. C. Daniel for the Commission.

Mr. Arthur D. Herrick, 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 Alexander Weiler and Lily Greenspan Weiler, individually, and doing business under the name of New York Premium Novelty 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, Alexander Weiler and Lily Greenspan Weiler, are individuals doing business under the name of New York Premium Novelty Co., with their principal office and place of business located at 168 Avenue A, New York, N. Y. Respondents maintain mailing addresses at 1123 Broadway, New York, N. Y., and 24 West Twentieth Street, New York, N. Y. Respondents are now, and for some time last past have been, engaged in the sale and distribution of chinaware, tableware, aluminum ware, dresser sets, electric irons, electric toasters, electric lamps, cameras, clocks, watches, tool sets, salt and pepper sets with trays, thermometers, cigarette cases, jewelry, cosmetics, razor blades, clothing, fountain 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 shipped or transported from their principal 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 partnerships and individuals and with corporations engaged in the sale and distribution of like or similar articles of 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 their business, as described in paragraph 1 hereof, respondents sell and distribute and have sold and distributed said products by means of a game of chance, gift enterprise, or lottery scheme. The respondents distribute or cause to be distributed to representatives and prospective representatives certain advertising literature including a sales circular. Respondents' 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 facts as to whether a purchaser of one of said pull card tabs receives an article which has an apparent greater value and higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the

amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondents, said respondents thereupon ship 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.

Respondents sell and distribute and have sold and distributed various assortments of said merchandise and furnish and have 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 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 a 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 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 and 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 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 merchandise in the manner above described, 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 by respondents of said method, because of said games of chance, has the capacity and tendency to and does unfairly divert trade and custom 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 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 September 10, 1938, issued and thereafter served its complaint in this proceeding upon Alexander Weiler and Lilly Greenspan Weiler (named in the complaint as Lily Greenspan Weiler), individually and doing business under the name of New York Premium Novelty Co., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by D. C. Daniel, P. C. Kolinski, and L. P. Allen, Jr., counsel for the Commission (respondents having offered no evidence in opposition to the allegations of the Commission's 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, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel for the Commission and counsel for the respondents, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Alexander Weiler and Lilly Greenspan Weiler (named in the complaint as Lily Greenspan Weiler), are individuals doing business under the name of New York Premium Novelty Co., with their principal office and place of business located at 168 Avenue A, New York, N. Y. Respondents maintain mailing addresses at 1123 Broadway and 24 West Twentieth Street, New York, N. Y. Respondents are now, and for more than five years last past have been, engaged in the sale and distribution of jewelry, cosmetics, cigarette lighters, electric lamps, razor blades, clocks, cameras, dresser sets, watches, kitchenware, tableware and various other articles of merchandise in commerce between and among the various States of the United States. Respondents cause and have caused said products when sold to be shipped or transported from their aforesaid 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. There is now, and has been for more than five years last past, a course of trade in such products by respondents in commerce between and among the various States of the United States.

PAR. 2. In so conducting their said business as hereinabove described, respondents have distributed and caused to be distributed between 800,000 and 1,000,000 advertising or sales circulars, each of which contained what is commonly known as a pull card device, to representatives and prospective representatives located in the various States of the United States. Such circulars also contained picturizations of various articles of respondents' merchandise. Respondents' said merchandise is, and has been, sold and distributed to the purchasing public in substantially the following manner:

Said pull card device 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 and prospective purchasers are unable to ascertain which articles of merchandise they are to receive or the prices to be to be paid therefor until after the tabs are separated or removed from the said pull tab device. Adjacent to said device there is a list of the articles of merchandise and the prices thereof, corresponding to the various articles of merchandise and the prices thereof, as concealed under said tabs. 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 retail values and regular prices greater than the prices so designated for them but

are distributed to the consumer or purchaser for the price designated on the tab which he pulls or removes from said device. The apparent greater values and regular prices of some of said articles of merchandise as compared to the prices the prospective customer will be required to pay in the event he secures one of said articles of merchandise, induce members of the purchasing or consuming public to select and pull the tabs in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid therefor. The facts as to whether a purchaser receives an article of greater retail value than the price designated therefor on such tab, which of said articles of merchandise the purchaser is to receive, and the amount of money which the purchaser is required to pay are thus determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the articles of merchandise listed under said tabs, collected the amounts charged therefor and remitted the money to the respondents, said respondents thereupon ship to or transport to said representative the merchandise sold by means of said device by said representatives, together with a premium for the representative as compensation for operating the device and selling and distributing the said merchandise. Such premium is selected by said representative from other articles of merchandise picturized in said sales or advertising circular. If the said representative so desires he may deduct a cash premium in lieu of said merchandise premium. Said representative delivers the articles of merchandise to the purchasers thereof in accordance with the list filled out when the tabs were removed or detached from the device as above described.

Immediately above said pull tab device there appears the following:

NOTICE TO PURCHASER: 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 book the price shown on the slip. If you do not want the article you need not buy it.

The Commission finds that, regardless of said notice, the said articles of merchandise have been and are, in fact, sold and distributed by means of said pull card devices in accordance with the sales plan or method described in paragraph 2 hereof.

Respondents, by means of the sales plan or method hereinabove described, have done an annual volume of business of between $25,000 and $30,000, 60 percent of which has been outside of the State of New York.

PAR. 3. The Commission finds that the persons or representatives to whom respondents have furnished or distributed said sales or advertis-

ing circulars containing said pull card devices use and have used the same in purchasing, selling and distributing respondents' merchandise in accordance with the sales plan or method hereinabove described. Respondents have thus supplied to and placed in the hands of others a means of conducting lotteries in the sale and distribution of their said merchandise in accordance with the sales plan or method hereinabove described. Respondents' said merchandise has thus been sold and distributed by means of a game of chance, gift enterprise, or lottery scheme, and respondents have reaped the benefits therefrom. The use by respondents of said sales plan or method in the sale of their merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The Commission finds that respondents have competitors who sell and distribute like or similar merchandise in commerce between and among the various States of the United States, which said competitors are unwilling to use said sales plan or method in the sale or distribution of their merchandise or any other sales plan or method involving a game of chance, gift enterprise, or lottery scheme, or any other 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 respondents as hereinabove found, many persons have been induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by respondents' said competitors.

PAR. 5. As a result of the use of said sales plan or method by respondents as hereinabove found, substantial trade is being, and has been, diverted to respondents from their said competitors 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, the answer of respondents, testimony and other evidence taken before Randolph Preston,

an examiner of the Commission heretofore duly designated by it in support of the allegations of said complaint (no evidence having been offered by respondents in opposition thereto), briefs filed herein and oral arguments by D. C. Daniel, counsel for the Commission, and Arthur D. Herrick, 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, Alexander Weiler and Lilly Greenspan Weiler (named in the complaint herein as Lily Greenspan Weiler) individually and doing business under the name of New York Premium Novelty Co., or 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 jewelry, cosmetics, cigarette lighters, electric lamps, razor blades, clocks, cameras, dresser sets, watches, kitchenware and tableware, 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 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

L. B. PATTERSON, TRADING AS NU-WAY 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 3852. Complaint, July 15, 1939—Decision, Jan. 27, 1941

Where an individual engaged in competitive, interstate sale and distribution of electric "Speed King Water Heater" for heating water through immersion in vessel containing same when attached by cord to ordinary electric fixture outlet, through representatives or distributors under plan by which such person took and transmitted orders and retained as commission certain amount of deposit made by purchasers, or under which he purchased heaters from aforesaid individual and resold same to public for whatever price could be obtained therefor; in advertising in newspapers and other periodicals of general circulation to secure services of such representatives or distributors in various States—

(*a*) Represented that said heater or device comprised or embodied fastest way known of heating water and boiled it instantly or in 60 seconds, and saved 50 percent of fuel bills and did the work of a $50 heater or one costing 40 to 50 times as much, facts being it would not save owners aforesaid proportion, or any substantial percentage, of their total household gas and fuel bills, could not be used for cooking except insofar as boiling small quantities of water might be considered cooking, did not boil water almost instantly or boil in 60 seconds any quantity of water sufficient to be of practical use in connection with purposes for which heater was designed, and other statements and representations above with respect thereto were likewise false, misleading, and deceptive;

(*b*) Represented and implied, through depiction of one of his said heaters with cord attached, disseminated as part of his advertising, and in connection with which there was arrow pointed to heater and printed legend "Underwriters Laboratory Seal of Approval," that both heater and cord attached thereto had received such approval, facts being representation and impression thus conveyed were untrue and misleading;

(*c*) Represented that representatives or distributors had earned as much as $36 a day and amounts ranging from $10 to $25 a day, and made profits of from 141 percent to 218 percent, through such statements as "Make up to 218% profit on your sales," "Make up to $20 a day," "With this plan you ought to be able to place 36 a day and sell at least 30 of them at a profit of $1.20 each to yourself * * *," and others of similar tenor, facts being no representative or distributor of said individual had ever earned $36 a day, nor did his representatives, except in very unusual cases, if ever, earn from $10 to $25 a day or make profits ranging as above set forth;

(*d*) Made use of such words as "Daring free-sample offer" and "I give you the demonstrator if you are honest with me and will send in orders * * *," and "Cut out this coupon * * * and mail it quick for my

free offer of pocket demonstrator," facts being he did not furnish a demonstrator free to said distributors or representatives, but price thereof was paid or included in that charged for total number sold to any of said individuals, and person obtaining same was obliged to purchase or to sell for said individual specified number of heaters, for which he paid cash, before receiving so-called free demonstrator; and

(*e*) Made such statements or representations as "Now here's the special offer I spoke about at the beginning of this letter," facts being so-called special offer and price, purportedly made only to a few of said representatives, was not in fact a special offer but, with slight and immaterial variations, was made to all prospective distributors, and price at which he offered said heater was not a special or reduced one, but usual and customary price at which product was offered and sold by him in normal and regular course of business;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and to cause them to purchase his said product as result of such erroneous belief engendered as above set forth, and with result that trade was diverted unfairly to him from his competitors who do not use same or similar misrepresentations in connection with sale of their respective products in commerce; to the injury of said 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. Randolph Preston*, trial examiner.
Mr. Donovan R. Divet for the Commission.
Bussian & DeBolt, 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 L. B. Patterson, an individual trading as Nu-Way Manufacturing 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, L. B. Patterson, is an individual trading as Nu-Way Manufacturing Co., with his office and principal place of business in the Walnut Building, Des Moines, Iowa.

Respondent is now and for several years last past has been engaged in the sale and distribution of an electric water heater sold under the name of Speed King Water Heater. Respondent's heater consists essentially of a small aluminum disk combined with a wire-heating element designed for use in home, shop, or office for the purpose of

heating water. The respondent causes the said water heater when sold to be transported from his aforesaid place of business in the State of Iowa or from the point or origin of the shipment thereof to the purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said water heater 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 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 corporations and with persons, firms, and partnerships engaged in the sale and distribution of small electric water heaters designed and used for the purpose for which respondent recommends and sells his said water heater.

PAR. 3. In the course and conduct of his said business respondent employs representatives to sell and distribute his said water heater throughout the various States of the United States and in the District of Columbia. Said representatives operate under two plans. Under the provisions of one of said plans, some of the said representatives take orders for said heaters, which orders are transmitted to and filled by the respondent. Under the provisions of the other plan, other representatives purchase said heaters from respondent and resell them to the public. For the purpose of securing the services of both types of representatives, respondent publishes advertisements in newspapers, periodicals, and magazines, soliciting agents to sell its product. Such advertisements emphasize and stress the claimed money-making possibilities for representatives selling respondent's product.

Among the advertisements so published by respondent and typical of its representations, are the following:

A big money clean-up for agents.

Up to 218% profit on your sales.

Make up to $20 day.

Up to $10 to $25 a day, easy, and full protection on exclusive territory puts you in a big-income business right away.

Sixty-second demonstration amazes housewives.

Daring free-sample offer.

Heats boiling water hot in 60 magic seconds.

I give you the demonstrator if you are honest with me and will send in orders for Speed King.

Cut out this coupon, and mail it now before you turn the page—and mail it quick, for my free offer of pocket demonstrator.

PAR. 4. When an inquiry is received from a prospective representative who has read one of respondent's said advertisements and has indicated an interest in becoming a representative for the sale of respondent's product, respondent sends to such person "follow-up" literature, letters, pamphlets, and order blanks, containing, among others, representations as follows:

With this plan you ought to be able to place 36 a day and sell at least 30 of them at a profit of $1.20 each to yourself. How would it feel to put $36 in your pocket for one day's work?

You can sit at home every morning and take orders and money out of envelopes that the postman brings you.

Pays 141% to 218% cash profit—up to $2 on every sale. Good for $10 to $30.

You've already lost almost two weeks of Speed King profits! Suppose you had started the day you received my first letter. By now you might have $75, $100, or more clear profits. Give me a chance to show you how to make $100 or more a week.

* * * thereby making the big money—up to 318% profit on every sale.

* * * thousands of dollars have been made by Speed King agents.

As a Speed King agent or distributor you can get a swell new 1937 car.

* * * big money, up to $75 to $100 per week.

Amazing disk boils water almost instantly.

* * * the new amazing water heater * * * that heats water boiling hot in 60 magic seconds.

Speed King is an electric water heater the fastest method known of heating water.

Although it is the fastest way known of heating water, Speed King actually saves users up to 50% on gas and fuel bills too.

It does the work of a $50 water heater except that it is faster and more economical than gas, oil, coal or coke.

Here's a device that does the job of heaters costing 40 or 50 times as much and does it much quicker too.

Now here's the special offer I spoke about at the beginning of this letter.

Respondent also, as part of his advertising, disseminates or causes to be disseminated pictorial representations of one of said Speed King Heaters with cord attached. In said representation an arrow points to the heater. Said arrow points to the heater from the words "Underwriters Laboratories' seal of approval." The said pictorial representation in its entirety is designed to and does give the impression that the said heater, as well as the attached cord, has received the seal of approval of the Underwriters Laboratories, whereas in truth and in fact said heater has never been approved as represented.

PAR. 5. Through the use of the above statements and representations, and other statements and representations similar thereto but not herein set out, the respondent represents and implies to the purchasing public and to prospective representatives:

1. That said Speed King Heater is the fastest way known of heating water; that it boils water almost instantly, heats water to the boiling point in 60 seconds, saves up to 50 percent of gas and fuel bills, and does the work of a $50 heater or heaters costing 40 to 50 times as much.

2. That said Speed King Heater has been approved by an accredited and recognized testing laboratory.

3. That respondent's representatives can and do earn $36 a day and more and make profits ranging from 141 percent to 218 percent, and can and do earn and make the other sums and percentages of profit set forth in said advertisements as aforesaid.

4. That the offer made to each prospective representative is a special offer and more advantageous than the offer made to other prospective representatives.

5. That one of said heaters will be furnished free and without cost or condition to each representative for use as a demonstrator in offering for sale and selling such heaters.

The aforesaid representations and implications so used and disseminated by the respondent are false, misleading, and deceptive, for in truth and in fact the Speed King Heater is not the fastest way known of boiling or heating water; will not heat any appreciable amount of water to the boiling point instantly or in 60 seconds; save up to 50 percent or any substantial percentage of gas or other fuel bills; and it does not do the work of a $50 water heater. Said heater has not been tested or approved by an accredited or recognized testing laboratory. It does not do the work of heaters costing 40 to 50 times as much, nor does it do it more quickly and it does not save money on fuel when compared with more expensive gas or oil burner heaters.

In truth and in fact respondent's representatives cannot and do not normally earn $36 a day or more or make profits of 141 percent to 218 percent, and cannot and do not normally earn or make the other sums and percentages of profit mentioned in said advertising matter; and respondent's representations as to the earnings and percentages of profit earned and made by his representatives are clearly in excess of the average earnings made by respondent's full-time representatives under normal conditions and in the usual course of business. Very few, if any, of respondent's representatives are full-time employees or have given the respondent "repeat" orders. Only a very small percentage of respondent's customers actually work as representatives of the respondent or make any further purchase of respondent's heaters other than the original small order, and respondent in his sales methods and efforts contemplates and accomplishes in general

only the initial sale to a customer rather than continuous and numerous "repeat" sales to agents, representatives, and salesmen.

The offer made by the respondent to a prospective representative is not a special offer made solely to such representative or to a special group of prospective representatives and more advantageous than the offer generally made to all other prospective representatives, but is the same offer in substance as is made to all prospective representatives. The respondent does not furnish representatives a "free" demonstrator for use in connection with the sale of said heaters but requires each representative to pay for the heater used as a demonstrator and does not return the money received for such heater unless and until each representative has sold a number of heaters prescribed by the respondent.

The claims of the respondent as shown by the aforesaid representations and implications as to the efficacy of said heater and as to the earnings and percentages of profit earned and made by representatives of the respondent grossly exceed those which might truthfully be made both with respect to the efficacy of the heater and the earnings and profits of representatives.

PAR. 6. The use by the respondent of the foregoing false, misleading, and deceptive representations and implications in connection with the offering for sale, sale, and distribution of said water heater have had and now have the capacity and tendency to and do mislead and deceive purchasers and prospective purchasers of respondent's product into the erroneous and mistaken belief that all of said representations are true and cause a substantial number of the purchasing public, because of said erroneous and mistaken belief, to purchase respondent's said product, thereby unfairly diverting trade to the respondent from his competitors in said commerce who do not in any wise misrepresent their products, to the injury of said competitors and to the injury of the 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 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 15, 1939, issued its complaint and thereafter caused it to be served upon respondent, L. B. Patterson,

charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto on August 21, 1939, testimony and other evidence in support of the allegations of said complaint were introduced by Donovan R. Divet, attorney for the Commission, and in opposition to the allegations of the complaint by John A. Bussian, attorney for the respondent, before Randolph Preston, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto (oral 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, L. B. Patterson, is an individual trading as Nu-Way Manufacturing Co., with his office and principal place of business in the Walnut Building, Des Moines, Iowa. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of an electric water heater sold under the name of "Speed King Water Heater." This heater consists of a small aluminum disk perforated with several holes of approximately one-fourth of an inch in diameter, which is wired with an electric cord. When attached to an ordinary electric fixture outlet and placed in a vessel containing water its purpose is to heat, and it does heat, the said water in the said vessel.

PAR. 2. Respondent causes said heater, when sold, to be shipped or transported from his place of business in the State of Iowa to purchasers in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the sale and distribution of said heaters in said commerce.

In the course and conduct of his business, respondent now is, and at all times mentioned herein has been, in substantial competition with individuals, firms and corporations engaged in the sale of similar apparatus or heaters in said commerce.

PAR. 3. Respondent's method of conducting the aforesaid business comprises two sales plans. Under the provisions of the first plan the respondent's representative or distributor takes orders for the heaters. Such orders are thereafter transmitted to and filled by the respondent who ships the heaters directly to the purchasers who have given the said orders. The said distributor retains as his commission a certain amount of the deposit made by said purchaser. Under the other plan the distributor purchases the heaters from the respondent and resells same to the public for whatever price can be obtained therefor. For the purpose of securing the services of such representatives or distributors located in various States, respondent has published advertisements in newspapers, magazines, and other periodicals of general circulation. Among and typical of such advertisements are the following:

A big money clean-up for agents.

Up to 218% profit on your sales.

Make up to $20 a day.

Up to $10 to $25 a day, easy, and full protection on exclusive territory puts you in a big-income business right away.

Sixty-second demonstration amazes housewives.

Daring free-sample offer.

Pays 141% to 218% cash profit—up to $2 on every sale. Good for $10 to $30.

You've already lost almost two weeks of Speed-King profits! Suppose you had started the day you received my first letter. By now you might have $75, $100, or more clear profits. Give me a chance to show you how to make $100 or more a week.

* * * thereby making the big money—up to 218% on every sale.

* * * thousand of dollars have been made by Speed King agents.

As a Speed King agent or distributor you can get a swell new 1937 car.

* * * big money, up to $75 to $100 per week.

Amazing disk boils water almost instantly.

* * * the new amazing water heater * * * that heats water boiling hot in 60 magic seconds.

Speed King is an electric water heater, the fastest method known of heating water.

Although it is the fastest way known of heating water, Speed King actually saves users up to 50% on gas and fuel bills too.

It does the work of a $50 water heater except that it is faster and more economical than gas, oil, coal or coke.

Here's a device that does the job of heaters costing 40 or 50 times as much and does it much quicker too.

Now here's the special offer I spoke about at the beginning of this letter.

I give you the demonstrator if you are honest with me and will send in orders for Speed King.

Cut out this coupon, and mail it now before you turn the page—and mail it quick for my free offer of pocket demonstrator.

With this plan you ought to be able to place 36 a day and sell at least 30 of them at a profit of $1.20 each to yourself. How would it feel to put $36 in your pocket for one day's work?

You can sit at home every morning and take orders and money out of envelopes that the postman brings you.

PAR. 4. The Commission finds that said advertisements, as above set out, were and are false, misleading, and deceptive. The said "Speed King Water Heater" has not saved, and will not save, to the owners thereof 50 percent or any substantial percentage of the said owners' total household gas and fuel bills. The heater has not been, and cannot be, used for cooking purposes, except insofar as the boiling of small quantities of water may be considered cooking. Said "Speed King" heater is not the fastest way known of heating water, does not boil water almost instantly, and does not boil in 60 seconds any quantity of water sufficient to be of practical use in connection with the purposes for which this heater is designed. Said heater does not do the work of a heater which would cost $50 or more; or of heaters costing 40 or 50 times as much as the said "Speed King" heater. No representative or distributor of respondent has ever earned $36 a day and respondent's agents or representatives do not, except in very unusual cases, if ever, earn from $10 to $25 a day, nor make profits ranging from 141 percent to 218 percent. The so-called "special offer" of the respondent, purportedly made only to a few of respondent's representatives, is not in fact a special offer but, with slight and immaterial variations, is made to all prospective distributors. Respondent does not furnish a demonstrator free to said distributors or representatives but the price of the said so-called "free" demonstrator is paid for or included in the price charged for the total number of demonstrators sold to any individual distributor or representative, and the person obtaining the so-called "free" demonstrator is obliged to purchase or to sell for respondent a specified number of heaters for which he pays cash before receiving the so-called "free" demonstrator.

Respondent, as a part of his advertising, has also disseminated certain pictorial representations of one of the "Speed King" heaters with cord attached. In and upon said representation there is an arrow pointing to the heater itself and printed in such advertisement is the legend "Underwriters Laboratory Seal of Approval." The Commission finds that said pictorial representations in its entirety has given, and does give, the impression that said heater, as well as the cord attached thereto, has received the approval of the

Underwriters Laboratory and that such representation and impression are untrue and misleading.

PAR. 5. 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 purchasing public into the erroneous belief that such representations were and are true, and has caused, and causes, them to purchase respondent's said product as a result of such erroneous belief engendered as above set forth. Through respondent's use of the aforesaid misrepresentations in the manner set forth, trade has been diverted unfairly to respondent from respondent's competitors who do not use the same or similar misrepresentations in connection with the sale of their respective products in commerce between and among the various States of the United States and in the District of Columbia, to the injury of said competitors and of the public.

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 Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein (no request for oral argument having been made), 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, L. B. Patterson, an individual, trading as Nu-Way Manufacturing 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the water heater, known as and sold under the name Speed King Water Heater, or any other heater of substantially the same construction, whether sold under that name or any other name, do forthwith cease and desist:

1. From representing that said water heater comprises or embodies the fastest way known of heating water or boils water instantly or in 60 seconds or in any other specified period of time, unless there is stated in connection with each such representation in equally prominent manner the amount or quantity of water that may be boiled within the period of time specified; that said heater saves 50 percent or any other percentage of fuel bills; or that it does the work of a $50 heater or of a heater costing 40 to 50 times as much or of any heater costing substantially more than respondent's said water heater.

2. From representing, by pictorial representations or otherwise, that respondent's said product has been approved or tested by "Underwriters Laboratories," or any similar organization, unless said product has been so approved or tested, and when only a portion or part of said product has been so approved or tested such fact must be clearly and unequivocally stated or indicated so as to inform the public as to which part or parts have been so approved or tested.

3. From representing that any specified sum of money is the actual or possible earnings or profits of agents, salesmen, representatives, or distributors of said product for any given period of time unless said representation is a true statement of the average earnings or profits consistently made by active full-time agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

4. From representing as a possible percentage of profit to agents, salesmen, representatives, or distributors selling said heater any percentage other than the percentage of profit consistently made by respondent's agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

5. From using the word "free," or any other word or words of similar import or meaning to designate, describe, or refer to products offered purchasers of other products, when such so-called "free" products are not delivered to purchasers of such other products without cost and unconditionally but only for a consideration, either in money or services.

6. From representing that the price at which respondent's said product is offered for sale is a special or reduced price or offer, when such price is in fact the usual and customary price at which said product is offered for sale and sold by respondent in the normal and regular course of business.

7. From representing that any offer to prospective agents, salesmen, representatives, or distributors of respondent's said product is

a special offer by use of the phrase "special offer," or by the use of any term or phrase of similar import or meaning, or in any other manner, when the same or substantially the same offer is made to all or to a substantial portion of the prospective agents, salesmen, representatives, or distributors of 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

THE ROBINSON CLAY PRODUCT 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 4034. Complaint, Feb. 16, 1940—Decision, Jan. 29, 1941

Where a number of corporations, firms, and individuals, namely—

I. Two concerns, to wit (a) a New York corporation which had a branch office and yard at Rochester and was a wholly owned subsidiary of a concern engaged, among other things, in manufacture and sale of vitrified sewer pipe, with plants and factories at various points in Ohio and Pennsylvania, and with office and principal place of business in Akron, Ohio, and (b) a Rochester firm or partnership which served as sales outlet at said point for another concern also engaged, among other things, in manufacture and sale of such pipe and with various factories for fabrication thereof and of kindred products in Ohio, Michigan, Indiana, and Pennsylvania, and with office and principal place of business in Cleveland, which actively participated either in the wholesale or retail transactions relating to sale of building materials, including vitrified pipe, in said city and vicinity and manufactured or caused to be manufactured or sold the greater part of such commodities used in said sales area; and

II. Some 25 or more corporations, firms and individuals, engaged in purchase and sale of builders' supply materials, including such pipe, in city aforesaid and sales area adjacent thereto, and, as thus engaged, in purchasing their supply of such materials and pipe from aforesaid manufacturers thereof or their sales subsidiaries, as above set forth, in other States, and in maintaining yards for temporary storage of products in question until sold or delivered to customers in or near said city (excepting carload or truckload quantities regularly shipped direct from place of manufacture to ultimate consumers at or near Rochester), and, as thus engaged, and except to extent to which competition in purchase and sale of such products had been restrained, lessened, injured, or suppressed by understanding, agreement, combination, and conspiracy below set forth, in active and substantial competition with each other and with other wholesalers, jobbers, dealers, and contractors in such materials, in purchase and sale of materials in question and in conduct of their respective businesses in said city and State; to purchasers in which city many other sellers of building materials, and including vitrified sewer pipe, with places of business located without said State, sold large quantities of such materials in commerce, in active and substantial competition, except to extent to which competition between them had been restrained, lessened, etc., by understanding, agreement, combination, and conspiracy above referred to, with each other in such sale and in sale of said products to Rochester dealers above referred to and to competitors of such dealers—

Cooperated, both acting directly and through their various representatives, with each other, beginning in 1936 or thereabouts, and continuing thereafter and for a long period of time, entered into and carried out understanding, agreement, combination, and conspiracy to restrict, restrain, suppress, and elim-

inate competition and to create monopoly in sale and distribution of building materials, including vitrified sewer pipe, in commerce; and in pursuance of, and for the purpose of carrying out, such agreement, understanding, combination, and conspiracy, and acting directly and through their designated representatives and in cooperation with each other—

(1) Agreed among themselves to fix and maintain and pursuant to such agreement fixed and maintained uniform delivered prices to consumers at which they, and each of them, sold, or offered for sale building materials, including vitrified sewer pipe, to the consuming public, including municipalities and Government agencies and projects;

(2) Established and maintained minimum prices at which various items of building materials, including vitrified pipe, were sold or offered for sale by jobbers, dealers, or contractors in question, and uniform terms, discounts, and conditions attaching to sale of various items of building supplies, including vitrified pipe;

(3) Induced certain of their members, by intimidation and persuasion, to raise the prices quoted by them to uniform delivered prices fixed as aforesaid, and held meetings among themselves to devise methods of exerting influence, or pressure, to require dealers, jobbers, manufacturers, and producers of building materials, including vitrified sewer pipe, to fix, establish, and maintain delivered prices to consumers, including municipalities and other Government agencies or projects, and to fix, establish, and publish uniform delivered prices as well, and to abide by and adhere to said uniform delivered prices so fixed and established; and

(4) Used and engaged in other cooperative acts and practices in promoting establishment of and carrying out aforesaid understanding, agreement, combination, and conspiracy set forth herein;

With result that capacity, tendency, and effect of said understanding, agreement, combination, conspiracy, and acts and practices of said various corporations, concerns, and individuals, were and had been to monopolize in themselves or some of their number business and industry of dealing in and distributing building materials, including vitrified sewer pipe, ultimately consumed at or in vicinity of Rochester, to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry, to deprive purchasing and consuming public, including municipalities and other Government agencies or projects, of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free, fair, and unrestrained competition in such industry, to otherwise operate as a restraint of trade and a detriment to freedom of fair and legitimate competition in said industry, and to obstruct natural flow of trade in building materials, including vitrified sewer pipe, in channels of commerce, among and between the several States:

Held, That such acts and practices of said corporations, concerns or firms, and individuals, under the circumstances 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 them in sale of building materials, including vitrified pipe, in commerce, placed in them power to control and enhance prices, tended to create in them monopoly in sale of such materials and pipe, and unreasonably restrained commerce therein and constituted unfair methods of competition.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. James M. Hammond for the Commission.

Sanders, Gravelle, Whitlock & Howrey, of Washington, D. C., and *Slabaugh, Seiberling, Huber & Guinther*, of Akron, Ohio, for The Robinson Clay Product Co. and The Robinson Clay Product Co. of New York.

Thompson, Hine & Flory, of Cleveland, Ohio, for Universal Sewer Pipe Corp.

Mr. Walter S. Forsyth, of Rochester, N. Y., for Empire Clay Products Co., Mann Builders Supply Co., Inc., Joseph L. Weckesser and Sinamus & Beck, Inc.

Harris, Beach, Folger, Bacon & Keating, of Rochester, N. Y., for American Clay & Cement Corp. and Goodstone Manufacturing Co., Inc.

Mr. Harold H. Barnsdale, of Lyons, N. Y., for Barnard Service & Supply Co.

Mr. J. Eugene Goddard, of Rochester, N. Y., for Gaetano Della Pietra.

MacFarlane & Harris, of Rochester, N. Y., for Domine Builders Supply Co., Inc.

Chamberlain, Page & D'Amanda, of Rochester, N. Y., for Flower City Builders' Supply Co.

Mr. Maurice G. Lynn, of Rochester, N. Y., for H. D. Grey Corp.

Goodwin, Nixon, Hargrave, Middleton & Devans, of Rochester, N. Y., for Hutchison-Rathbun, Inc., and Rochester Lime & Cement Corp.

Backus & Backus, of Rochester, N. Y., for the Irondequoit Coal and Supply Co.

Mr. Daniel F. Fitzgerald, of Rochester, N. Y., for Keystone Builders Supply Co., Inc.

Jefferson & Allen, of Rochester, N. Y., for Matthews & Fields and Van de Visse & Kildea Lumber Co., Inc.

Peter G. & Jay A. Smith, of Webster, N. Y., for Russell B. Mason Co.

Mr. Robert W. Lochner, of Rochester, N. Y., for Ardean R. Miller, Inc., and Rappl & Hoenig Co.

Mr. Fred J. Slater, of Rochester, N. Y., for Peoples Coal & Lumber Co.

Mann, Strang, Bodine & Wright, of Rochester, N. Y., for Rochester Lumber Co.

Mr. William B. Hanks, of Rochester, N. Y., for Schaeffer Brothers Builders Supply Co., Inc.

Ogden & Schwartz, of Rochester, N. Y., for Stonewood Builders Supply, Inc.

Castle & Fitch, of Rochester, N. Y., for Theodore H. Swan Brick & Tile Co., Inc.

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

Bartholomew & Bartholomew, of Buffalo, N. Y., for Pittsford Lumber Co., Inc.

Mr. J. Raymond Tobin, of Rochester, N. Y., for Schreib & Watson, 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 parties described in the caption hereof, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Robinson Clay Product Co., is a corporation organized and existing pursuant to the laws of the State of Maine, having its office and principal place of business in the Second National Bank Building, Akron, Ohio. It is engaged, among other things, in the manufacture and sale of vitrified sewer pipe. It maintains and operates factories at Akron, Parral, Midvale, Mogadore, and Malvern, in the State of Ohio, and at Clearfield, in the State of Pennsylvania.

Respondent, The Robinson Clay Product Co. of New York, is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business in the Empire State Building, New York, N. Y. It is entirely owned and controlled by respondent, The Robinson Clay Product Co., and was organized by the latter concern for the purpose of marketing and furthering the sale of its said products to dealers, contractors, and to the public in the various States of the United States. Said respondent, The Robinson Clay Product Co., of New York, maintains a branch office and yard at Rochester, N. Y., in which it stores its said products temporarily awaiting sale, and from which office and yard it supplies dealers and contractors in that city and in the sales area adjacent thereto with the said products manufactured by respondent, The Robinson Clay Product Co., at its various factories

located at points outside of the State of New York, as hereinabove set out, and shipped from said factories to said yards of said respondent, The Robinson Clay Product Co. of New York. Orders for vitrified pipe and similar materials received by it at Rochester are supplied direct from this yard, or if for carload quantities, the order may be, and generally is, filled by shipment from the said factories of respondent, The Robinson Clay Product Co. in the States of Ohio and Pennsylvania direct to purchasers at or near Rochester, New York. Said respondents, The Robinson Clay Product Co. and The Robinson Clay Product Co. of New York, at all times mentioned herein acted and now act concertedly and in cooperation with each other and with the other respondents hereinafter named in the acts and practices hereinafter alleged.

Respondent, Universal Sewer Pipe Corporation, is a corporation organized and existing pursuant to the laws of the State of Ohio, having its office and principal place of business in the Union Trust Building, Cleveland, Ohio. It is engaged, among other things, in the manufacture and sale of vitrified sewer pipe and maintains eight factories for the fabrication of that and kindred products in the States of Ohio, Michigan, Indiana, and Pennsylvania.

The products of the respondent Universal Sewer Pipe Corporation so manufactured at its various plants or factories located as aforesaid, are sold and distributed through the medium of dealers, jobbers, and wholesalers located in the various States of the United States. Its sales outlet at Rochester, N. Y., is through the medium of the respondent copartnership, Empire Clay Products Co., hereinafter described. The latter company maintains a yard at Rochester, N. Y., where substantial quantities of the products of the respondent Universal Sewer Pipe Corporation are temporarily stored, unchanged and as originally manufactured, for sale and delivery to local dealers and contractors. The respondent Empire Clay Products Co. also receives orders for carload quantities of the said products of the respondent Universal Sewer Pipe Corporation, which products are frequently shipped direct from the said factories of the latter company located in States other than the State of New York, to dealers, contractors, and other members of the public, including municipalities, at or near Rochester, including municipalities, at or near Rochester, N. Y.

Respondents Universal Sewer Pipe Corporation and Empire Clay Products Co. acted concertedly and in cooperation each with the other, and in cooperation with the other respondents named in this complaint, in the acts and practices hereinafter alleged.

PAR. 2. Respondent Rochester Builders Supply Association, hereinafter referred to as respondent Association, is an unincorporated voluntary association, composed of dealers in building and construction materials in the city of Rochester, N. Y., having its office and principal place of business at the Seneca Hotel, Rochester, N. Y.

Respondent, Edwin C. Kaelber, is an individual functioning as secretary of the respondent Association. His office and principal place of business is located at the Seneca Hotel, Rochester, N. Y.

Respondents, Russell L. Pinkley and Urban G. Weckesser, are copartners, doing business under the firm name and style of Empire Clay Products Co., having their office and principal place of business at 735 Lexington Avenue, Rochester, N. Y.

Respondent, Frank A. Seiser, is an individual doing business under the firm name and style of Acme Builders' Supply Co. His office and principal place of business is located at 1030 Main Street, East, Rochester, N. Y.

Respondent, American Clay & Cement Corporation, is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business at 1175 East Main Street, Rochester, N. Y.

Respondents, Nazareth L. Montalbine and George E. Hartman, are copartners, doing business under the firm name and style of Barnard Service & Supply Co. Their office and principal place of business is located at 2450 Dewey Avenue, Rochester, N. Y.

Respondent, Britton Stone & Supply Corporation, is a corporation existing pursuant to and in accordance with the laws of the State of New York, having its office and principal place of business at 709 Commerce Building, Rochester, N. Y.

Respondent, Comac Builders' Supply Corporation, is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 16 Norman Street, Rochester, N. Y.

Respondent, Gaetano Della Pietra, is an individual having his office and principal place of business on Linden Avenue East, Rochester, N. Y.

Respondent, Domine Builders Supply Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York, having its office and principal place of business located at 155 Gould Street, Rochester, N. Y.

Respondent, John G. Bianchi, is an individual operating under the firm name and style of Flower City Builders' Supply Co. His office and principal place of business is located at 179 Cady Street, Rochester, N. Y.

Respondent, Goodstone Manufacturing Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 470 Hollenbeck Street, Rochester, N. Y.

Respondent, H. D. Grey Corporation, is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 186 Norman Street, Rochester, N. Y.

Respondent, Hutchison-Rathbun, Inc., is a corporation existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 255 North Union Street, Rochester, N. Y.

Respondent, The Irondequoit Coal and Supply Co., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 149 Ridge Road East, Rochester, N. Y.

Respondent, Keystone Builders Supply Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 85 Palm Street, Rochester, N. Y.

Respondent, Mann Builders Supply Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 436 Conkey Avenue, Rochester, N. Y.

Respondents, Leslie E. Fields and Lena Matthews, are copartners doing business under the firm name and style of Matthews & Fields. Their office and principal place of business is located at 120 Stonewood Avenue, Rochester, N. Y.

Respondent, R. B. Mason, is an individual doing business under the firm name and style of Russell B. Mason Co. His office and principal place of business is located at 205 North Avenue, Webster, N. Y.

Respondent, Ardean R. Miller, Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 500 West Avenue, Rochester, N. Y.

Respondent, Monroe Block Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 348 Exchange Street, Rochester, N. Y.

Respondent, William Heydweiller, is an individual doing business under the firm name and style of Peoples Coal & Lumber Co., having

his office and principal place of business at 4585 Lake Avenue, Rochester, N. Y.

Respondents, George Rappl and George Hoenig, are copartners doing business under the firm name and style of Rappl & Hoenig Co. Their office and principal place of business is located at 1441 Ridge Road East, Rochester, N. Y.

Respondent, Rochester Lime & Cement Corporation, is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 174 Colvin Street, Rochester, N. Y.

Respondent, Rochester Lumber Co., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 2040 East Avenue, Rochester, N. Y.

Respondent, Schaeffer Brothers Builders Supply Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 1025 Chili Avenue, Rochester, N. Y.

Respondent, Stonewood Builders Supply, Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 85 Stonewood Avenue, Rochester, N. Y.

Respondent, Theodore H. Swan Brick & Tile Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 723 Clarissa Street, Rochester, N. Y.

Respondent, Van de Visse & Kildea Lumber Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 1503 Lyell Avenue, Rochester, N. Y.

Respondent, Joseph L. Weckesser, is an individual having his office and principal place of business at 364 Aberdeen Street, Rochester, N. Y.

Respondent, Whitmore-Rauber & Vicinus, is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 51 Griffith Street, Rochester, N. Y.

Respondent, Sinamus & Beck, Inc., is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business at 32 High Street, Fairport, N. Y.

Respondent, Pittsford Lumber Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business located at Pittsford, N. Y.

Respondent, Schreib & Watson, Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York, having its office and principal place of business located at Pittsford, N. Y.

All of the respondents named in this paragraph, with the exception of the respondent Association and respondent Edwin C. Kaelber, its secretary, are engaged, among other things, in the purchase and sale of builders' supply materials, including vitrified pipe, in the city of Rochester, N. Y., and the sales area adjacent thereto. The respondents named in this paragraph purchase their supply of building materials, including vitrified pipe, from the manufacturer thereof, located in States other than the State of New York and maintain yards for the temporary storage of said products until they are sold and delivered to customers in or near Rochester, N. Y., except as to carload or truckload quantities which are regularly shipped direct from the place of manufacture as aforesaid, to the ultimate consumers at or near Rochester, N. Y.

PAR. 3. Respondent Association for more than 3 years last past had, and now has, for its purpose, among others, that of effectively aiding the other respondents or some of them herein named in paragraphs 1 and 2 hereof, to carry out the agreement, combination, and conspiracy set forth in paragraph 6 hereof.

Respondent, Edwin C. Kaelber, individually and as secretary of the respondent Association has assisted, aided, directed, and controlled, and now aids, assists, directs, and controls the organization of the said respondent Association; calls the meetings of its members and carries out for and on behalf of the members thereof the activities of the said respondent Association as hereinafter alleged.

PAR. 4. The aforesaid respondents named in paragraph 1 hereof have actively participated either in the wholesale or retail transactions relating to the sale of building materials, including vitrified pipe, in the said city of Rochester, N. Y., and vicinity, and manufacture the greater part of that commodity used in that sales area. The respondents named in paragraph 2 hereof now constitute, and for more than 3 years last past have constituted, a substantial majority of all dealers in building materials, including vitrified pipe, used or sold in the city of Rochester, State of New York, and vicinity. In the course and conduct of their respective businesses, as afore-

said, except to the extent to which competition in the purchase and sale of building supplies, including vitrified pipe, has been restrained, lessened, injured, or suppressed by the understanding, agreement, combination and conspiracy hereinafter alleged, the respondent manufacturers, jobbers, and dealers in building materials, including vitrified sewer pipe, have been and are now, in active and substantial competition with each other, and with other manufacturers, wholesalers, jobbers, dealers, and contractors in building materials, including vitrified pipe, in the purchase and sale of those materials.

PAR. 5. For more than 3 years last past there were and have been, and there are now, many other manufacturers and sellers of building materials, including vitrified sewer pipe, whose respective factories and places of business were, and are now, located outside the State of New York, who have been, and are now, engaged in the business of manufacturing and selling, or manufacturing or selling, building materials, including vitrified sewer pipe, 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 materials to purchasers thereof located in the State of New York and shipping said building materials, including vitrified pipe, in commerce to such purchasers in the State of New York from States other than the State of New York. Except to the extent to which competition between said manufacturers and sellers, or manufacturers or sellers, of building materials, including vitrified pipe, and in the sale thereof for shipment in commerce into the State of New York from States other than the State of New York has been restrained, lessened, injured, and suppressed by the understanding, agreement, combination, and conspiracy hereinafter referred to, the said manufacturers and sellers, or manufacturers or 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 of building materials, including vitrified pipe, and in the sale thereof for shipment into the State of New York from States other than the State of New York, and in the sale thereof to the respondent dealers and to competitors of respondent dealers causing said products to be shipped to said respondent dealers and competitors of respondent dealers in commerce into the State of New York from States other than the State of New York.

PAR. 6. The respondents named in paragraphs 1 and 2 hereof, acting directly and through their respective representatives, and acting in cooperation with each other and with the respondent

Association, and its officers, beginning in the year 1936, or thereabouts, and continuing thereafter for a long period of time, entered into, and since have carried out, an understanding, agreement, combination, and conspiracy to restrict, restrain, suppress, and eliminate competition and to create a monopoly in the sale and distribution of building materials, including vitrified pipe, in commerce among and between the several States of the United States, as hereinafter described.

In furtherance of said understanding, agreement, combination, and conspiracy, referred to above, and in order to effectuate the same, said respondents named in paragraphs 1 and 2 hereof, acting directly or through their respective representatives, agents, or dealers, and acting in cooperation with each other, agreed to organize, and did organize, and still participate in the operation and control of respondent Association, and since its organization have participated and now participate in the activities of said Association, as more fully hereinafter set out.

Pursuant to, and for the purpose of carrying out said understanding, agreement, combination, and conspiracy, said respondents named in paragraphs 1 and 2 hereof, acting directly and through their designated representatives, and acting in cooperation with each other, and in cooperation with the respondent Association, and its officers, have committed and performed, and continue to, and now do, perform and engage in, among others, the following acts and practices:

(*a*) Agreed among themselves to fix and maintain, and pursuant to such agreement have fixed and maintained, and now fix and maintain, uniform delivered prices to consumers at which the aforesaid respondents named in paragraphs 1 and 2 hereof and each of them sold or now sell, or offer for sale, building materials, including vitrified sewer pipe, to the consuming public, including municipalities, and other Government agencies and projects.

(*b*) Established and maintained minimum prices at which various items of building materials, including vitrified pipe, are sold or offered for sale by the respondent jobbers, dealers, or contractors named herein.

(*c*) Induced certain of the aforesaid respondents by intimidation and persuasion to raise the prices quoted by them to the uniform delivered prices fixed as aforesaid.

(*d*) Interfered with or prevented competitors of respondent dealers from purchasing or obtaining building supplies from manufacturers thereof located in States other than the State of New York.

(*e*) Established and maintained uniform terms, discounts, and conditions attaching to the sale of various items of building supplies, including vitrified pipe.

(*f*) Held meetings among themselves or with the respondent Association, its members and officers, to devise methods of exerting influence, pressure, coercion, or other means of intimidation to require manufacturers and producers of building materials, including vitrified sewer pipe, to fix, establish, and maintain delivered prices to consumers, including municipalities and other government agencies or projects, and to fix, establish, and publish uniform delivered prices as well, and to abide by and adhere to said uniform delivered prices so fixed and established.

(*g*) Used and engaged in other cooperative acts, coercive means and practices in promoting the establishment of and carrying out the aforesaid understanding, agreement, combination, and conspiracy set forth herein.

PAR. 7. The capacity, tendency, and effect of said understanding, agreement, combination, and conspiracy, and the acts and practices of the respondents, as set forth herein, are, and have been, to monopolize in said respondents, or some of them, the business and industry of manufacturing, dealing in and distributing building materials, including vitrified sewer pipe, ultimately consumed at or in the vicinity of Rochester, N. Y.; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry; to deprive the purchasing and consuming public, including municipalities and other Government agencies or projects, of the advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free, fair, and unrestrained competition in such industry; to otherwise operate as a restraint in trade and a detriment to the freedom of fair and legitimate competition in said industry, and to obstruct the natural flow of trade in building materials, including vitrified sewer pipe, in the channels of commerce, among and between the several States of the United States.

PAR. 8. The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public, and have a dangerous tendency to, and have actually, hindered and prevented price competition between and among respondents in the sale of building materials, including vitrified sewer pipe, in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have increased the prices of building materials, including vitrified sewer pipe, paid

by the purchasers thereof and consequently the prices paid by the public; have created in the respondents a monopoly in the sale of building materials, including vitrified sewer pipe, in such commerce, have unreasonably restrained such commerce in building materials, including vitrified sewer pipe, 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 February 16, 1940, issued and on February 17, 1940, served its complaint on the parties named in the caption hereof as respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondents' answers, the Commission by order entered herein granted the motions of respondents, The Robinson Clay Product Co. of New York; Russell L. Pinkley and Urban G. Weckesser, copartners doing business under the firm name and style of Empire Clay Products Co.; American Clay & Cement Corporation; Nazareth L. Montalbine and George E. Hartman, copartners doing business under the firm name and style of Barnard Service & Supply Co.; Comac Builders' Supply Corp.; Domine Builders Supply Co., Inc.; John G. Bianchi, an individual doing business under the firm name and style of Flower City Builders' Supply Co.; Goodstone Manufacturing Co., Inc.; H. D. Grey Corporation; Hutchison-Rathbun, Inc.; Keystone Builders Supply Co., Inc.; Mann Builders Supply Co., Inc.; Leslie E. Fields and Lena Matthews, copartners doing business under the firm name and style of Matthews & Fields; R. B. Mason, an individual doing business under the firm name and style of Russell B. Mason Co.; Ardean R. Miller, Inc.; William Heydweiller, an individual doing business under the firm name and style of Peoples Coal & Lumber Co.; George Rappl and George Hoenig, copartners doing business under the firm name and style of Rappl & Hoenig Co.; Rochester Lime & Cement Corporation; Rochester Lumber Co.; Schaeffer Brothers Builders Supply Co., Inc.; Stonewood Builders Supply, Inc.; Theodore H. Swan Brick & Tile Co., Inc.; Van de Visse & Kildea Lumber Co., Inc.; Joseph L. Weckesser; Whitmore-Rauber & Vicinus; Sinamus & Beck, Inc.; Pittsford Lumber Co., Inc.; and Schreib & Watson, Inc., for permission to withdraw their original 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 offices of the Commission.

After the filing of said complaint, respondent Monroe Block Co., Inc., filed its answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing on said facts. Respondents Robinson Clay Product Co., Universal Sewer Pipe Corporation, Rochester Builders Supply Association, an association of building supply dealers, Edwin C. Kaelber, individually and as Secretary of respondent Rochester Builders Supply Association, Gaetano Della Pietra, an individual, and The Irondequoit Coal & Supply Co. filed answers denying the allegations of the complaint. No answers were filed by respondent Frank A. Seiser, an individual, deceased on the approximate date of the issuance of the complaint, formerly doing business under the firm name and style of Acme Builders' Supply Co., and respondent Britton Stone & Supply Corporation, bankrupt on the date of the issuance of the complaint.

Therefore, this proceeding regularly came on for final hearing before the Commission on the record herein, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent The Robinson Clay Product Co. is a corporation organized and existing pursuant to the laws of the State of Maine, having its office and principal place of business located in the Second National Bank Building, Akron, Ohio. It is engaged, among other things, in the manufacture and sale of vitrified sewer pipe. It operates and maintains plants and factories at various points in the States of Ohio and Pennsylvania.

The respondent, The Robinson Clay Product Co. of New York is a corporation organized, existing and doing business pursuant to the laws of the State of New York, having its office and principal place of business located in the Empire State Building, New York, N. Y. It is entirely owned and controlled by respondent The Robinson Clay Product Co. and was organized by the latter concern for the purpose of marketing and furthering the sale of its said products to dealers, contractors, and to the public in the various States of the

United States. Said respondent The Robinson Clay Product Co. of New York maintains a branch office and yard at Rochester, N. Y., in which it stores its said products temporarily awaiting sale and from which office and yard it supplies dealers and contractors in that city and in the sales area adjacent thereto with the said products manufactured by respondent The Robinson Clay Product Co. at its various factories located at points outside the State of New York, as hereinabove set out, and shipped from said factories to said yards of respondent The Robinson Clay Product Co. of New York. Orders for vitrified pipe and similar materials received by it at Rochester are supplied direct from this yard or, if for carload quantities, the order will be, and generally is, filled by shipment from the said factories of respondent The Robinson Clay Product Co. in the States of Ohio and Pennsylvania, direct to purchasers at or near Rochester, N. Y.

Respondent, Universal Sewer Pipe Corporation, is a corporation organized and existing pursuant to the laws of the State of Ohio, having its office and principal place of business in the Union Commerce Building, Cleveland, Ohio. It is engaged, among other things, in the manufacture and sale of vitrified sewer pipe and maintains various factories for the fabrication of that and kindred products in the States of Ohio, Michigan, Indiana, and Pennsylvania. The products of the respondent, Universal Sewer Pipe Corporation, so manufactured at its various plants and factories, located as aforesaid, are sold and distributed through the medium of dealers, jobbers, and wholesalers located in the various States of the United States, including its sales outlet at Rochester, N. Y., respondent copartnership, Russell L. Pinkley, and Urban G. Weckesser, copartners doing business under the firm name and style of Empire Clay Products Co., hereinafter described.

Respondents Russell L. Pinkley and Urban G. Weckesser are copartners, doing business under the firm name and style of Empire Clay Products Co., having their office and principal place of business at 735 Lexington Avenue, Rochester, N. Y. Said respondents maintain a yard at Rochester, N. Y., where substantial quantities of the products of the respondent Universal Sewer Pipe Corporation are temporarily stored, unchanged and as originally manufactured, for sale and delivery to local dealers and contractors. Said respondents also receive orders for car-load quantities of the said products of respondent Universal Sewer Pipe Corporation, which products are regularly shipped direct from the said factories of the latter company, located in States other than the State of New York, to dealers, con-

tractors and other members of the public, including municipalities at or near Rochester, N. Y.

PAR. 2. Respondent, Rochester Builders Supply Association, hereinafter referred to as respondent Association, was an unincorporated voluntary association, composed of dealers in building and construction materials in the city of Rochester, N. Y., including all or some of the respondent dealers, having its office and principal place of business at the Seneca Hotel, Rochester, N. Y.

Respondent Edwin C. Kaelber is an individual who functions as Secretary of the respondent Association. His residence is located at 29 Dorchester Road, Rochester, N. Y.

Respondent Frank A. Seiser was an individual doing business under the firm name and style of Acme Builders' Supply Co. His office and principal place of business was located at 1030 Main Street, East Rochester, N. Y. He died during the year 1940, approximately simultaneous with the issuance of the complaint in this proceeding.

Respondent American Clay & Cement Corporation is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business at 1175 East Main Street, Rochester, N. Y.

Respondents Nazareth L. Montalbine and George E. Hartman are copartners, doing business under the firm name and style of Barnard Service & Supply Co. Their office and principal place of business is located at 2450 Dewey Avenue, Rochester, N. Y.

Respondent Britton Stone & Supply Corporation was a corporation existing pursuant to and in accordance with the laws of the State of New York with its office and principal place of business located at 709 Commerce Building, Rochester, N. Y. Thereafter it changed its name to Sun Builders Supply Corporation and subsequently was declared a bankrupt. Its affairs are now in course of liquidation.

Respondent Comac Builders' Supply Corporation is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 16 Norman Street, Rochester, N. Y.

Respondent Gaetano Della Pietra is an individual having his office and principal place of business on Linden Avenue, East Rochester, N. Y.

Respondent Domine Builders Supply Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York, having its office and principal place of business located at 155 Gould Street, Rochester, N. Y.

Respondent John G. Bianchi is an individual operating under the firm name and style of Flower City Builders' Supply Co. His office and principal place of business is located at 179 Cady Street, Rochester, N. Y.

Respondent Goodstone Manufacturing Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 470 Hollenbeck Street, Rochester, N. Y.

Respondent H. D. Grey Corporation is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 186 Norman Street, Rochester, N. Y.

Respondent Hutchison-Rathbun, Inc., is a corporation existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 255 North Union Street, Rochester, N. Y.

Respondent The Irondequoit Coal & Supply Co. is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 149 Ridge Road East, Rochester, N. Y.

Respondent Keystone Builders Supply Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 85 Palm Street, Rochester, N. Y.

Respondent Mann Builders Supply Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 436 Conkey Avenue, Rochester, N. Y.

Respondents Leslie E. Fields and Lena Matthews are copartners doing business under the firm name and style of Matthews & Fields. Their office and principal place of business is located at 120 Stonewood Avenue, Rochester, N. Y.

Respondent R. B. Mason is an individual doing business under the firm name and style of Russell B. Mason Co. His office and principal place of business is located at 205 North Avenue, Webster, N. Y.

Respondent Ardean R. Miller, Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 500 West Avenue, Rochester, N. Y.

Respondent Monroe Block Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office

and principal place of business is located at 348 Exchange Street, Rochester, N. Y.

Respondent William Heydweiller is an individual doing business under the firm name and style of Peoples Coal & Lumber Co., having his office and principal place of business at 4585 Lake Avenue, Rochester, N. Y.

Respondents George Rappl and George Hoenig are copartners doing business under the firm name and style of Rappl & Hoenig Co. Their office and principal place of business is located at 1441 Ridge Road East, Rochester, N. Y.

Respondent Rochester Lime & Cement Corporation is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 174 Colvin Street, Rochester, N. Y.

Respondent Rochester Lumber Co. is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 2040 East Avenue, Rochester, N. Y.

Respondent Schaeffer Brothers Builders Supply Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York. Its office and principal place of business is located at 1025 Chili Avenue, Rochester, N. Y.

Respondent Stonewood Builders Supply, Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 23 Sheppler Street, Rochester, N. Y.

Respondent Theodore H. Swan Brick & Tile Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 723 Clarissa Street, Rochester, N. Y.

Respondent Van de Visse & Kildea Lumber Co., Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 1503 Lyell Avenue, Rochester, N. Y.

Respondent Joseph L. Weckesser is an individual having his office and principal place of business at 364 Aberdeen Street, Rochester, N. Y.

Respondent Whitmore-Rauber & Vicinus is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York. Its office and principal place of business is located at 51 Griffith Street, Rochester, N. Y.

Respondent Sinamus & Beck, Inc., is a corporation organized and existing pursuant to the laws of the State of New York, having its

office and principal place of business at 32 High Street, Fairport, N. Y.

Respondent Pittsford Lumber Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business located at Pittsford, N. Y.

Respondent Schreib & Watson, Inc., is a corporation organized and existing pursuant to and in accordance with the laws of the State of New York, having its office and principal place of business located at Pittsford, N. Y.

All of the respondents named in this paragraph, with the exception of the respondent Association and respondent Edwin C. Kaelber, its secretary, are engaged, among other things, in the purchase and sale of builders' supply materials, including vitrified pipe, in the city of Rochester, New York, and the sales area adjacent thereto. The respondents named in this paragraph purchase their supply of building materials, including vitrified pipe, from the manufacturers thereof or their sales subsidiaries as named in paragraph 1 hereof, located in States other than the State of New York and maintain yards for the temporary storage of said products until they are sold and delivered to customers in or near Rochester, N. Y., except as to carload or truckload quantities which are regularly shipped direct from the place of manufacture, as aforesaid, to the ultimate consumers at or near Rochester, N. Y.

PAR. 3. The respondents The Robinson Clay Product Co. of New York and the Empire Clay Products Co. have actively participated either in the wholesale or retail transactions relating to the sale of building materials, including vitrified pipe, in the said city of Rochester, N. Y., and vicinity, and manufacture or cause to be manufactured or sold the greater part of said commodities used in that sales area. The respondents named in paragraph 2 hereof now constitute, and for more than three years last past have constituted, a substantial majority of all dealers in building materials, including vitrified pipe, used or sold in the city of Rochester, State of New York, and vicinity. 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, including vitrified pipe, has been restrained, lessened, injured, or suppressed by the understanding, agreement, combination, and conspiracy hereinafter found, the respondent jobbers and dealers in building materials, including vitrified sewer pipe, have been and are now in active and substantial competition with each other, and with other wholesalers, jobbers, dealers, and contractors in building materials, including vitrified pipe, in the purchase and sale of those materials.

PAR. 4. For more than 3 years last past there were and have been, and there are now, many other sellers of building materials, including vitrified sewer pipe, whose respective places of business were, and are now, located outside the State of New York who have been, and are now, engaged in the business of selling building materials, including vitrified sewer pipe, 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 materials to purchasers thereof located in the State of New York and shipping said building materials, including vitrified pipe, in commerce to such purchasers in the State of New York from States other than the State of New York. Except to the extent to which competition between said sellers of building materials, including vitrified pipe, and in the sale thereof for shipment in commerce into the State of New York from States other than the State of New York has been restrained, lessened, injured, and suppressed by the understanding, agreement, combination, and conspiracy hereinafter referred to, the said 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 sale of building materials, including vitrified pipe, and in the sale thereof for shipment into the State of New York from States other than the State of New York, and in the sale thereof to the respondent dealers and to competitors of respondent dealers, causing said products to be shipped to said respondent dealers and competitors of respondent dealers in commerce into the State of New York from States other than the State of New York.

PAR. 5. The respondents named in paragraphs 1 and 2 hereof, except The Robinson Clay Product Co., Universal Sewer Pipe Corporation, Rochester Builders Supply Association, Edwin C. Kaelber, individually and as secretary of Rochester Builders Supply Association, Frank A. Seiser, deceased, an individual who heretofore did business under the firm name and style of Acme Builders' Supply Co., Britton Stone & Supply Corporation, Gaetano Della Pietra, and The Irondequoit Coal & Supply Co., acting directly and through their respective representatives, have acted in cooperation with each other beginning in the year 1936, or thereabouts, and continuing thereafter for a long period of time, entered into and since have carried out an understanding, agreement, combination and conspiracy to restrict, restrain, suppress and eliminate competition and to create a monopoly in the sale and distribution of building materials, including

vitrified sewer pipe, in commerce among and between the several States of the United States as hereinafter described.

Pursuant to and for the purpose of carrying out said understanding, agreement, combination and conspiracy, said respondents named in paragraphs 1 and 2 hereof, except The Robinson Clay Product Co., Universal Sewer Pipe Corporation, Rochester Builders Supply Association, Edwin C. Kaelber, individually and as secretary of said Association, Frank A. Seiser, deceased, an individual who heretofore did business under the firm name and style of Acme Builders' Supply Co., Britton Stone & Supply Corporation, Gaetano Della Pietra and The Irondequoit Coal & Supply Co., acting directly and through their designated representatives, and acting in cooperation with each other, have committed and performed and continue to and now do perform and engage in, among other things, the following acts and practices:

(*a*) Agreed among themselves to fix and maintain and pursuant to such agreement have fixed and maintained and now fix and maintain uniform delivered prices to consumers at which they sell, and each of them sold or now sell, or offer for sale building materials, including vitrified sewer pipe, to the consuming public, including municipalities and to Government agencies and projects.

(*b*) Established and maintained minimum prices at which various items of building materials, including vitrified pipe, are sold or offered for sale by the respondent jobbers, dealers or contractors named herein.

(*c*) Induced certain of the aforesaid respondents by intimidation and persuasion to raise the prices quoted by them to the uniform delivered prices fixed as aforesaid:

(*d*) Established and maintained uniform terms, discounts, and conditions attaching to the sale of various items of building supplies, including vitrified pipe.

(*e*) Held meetings among themselves to devise methods of exerting influence, or pressure, to require dealers, jobbers, manufacturers, and producers of building materials, including vitrified sewer pipe, to fix, establish, and maintain delivered prices to consumers, including municipalities and other Government agencies or projects, and to fix, establish, and publish uniform delivered prices as well, and to abide by and adhere to said uniform delivered prices so fixed and established.

(*f*) Used and engaged in other cooperative acts and practices in promoting the establishment of and carrying out the aforesaid understanding, agreement, combination, and conspiracy set forth herein.

PAR. 6. The capacity, tendency, and effect of said understanding, agreement, combination, and conspiracy and the acts and practices

of the respondents named in paragraphs 1 and 2 hereof, except The Robinson Clay Product Co., Universal Sewer Pipe Corporation, Rochester Builders Supply Association, Edwin C. Kaelber, individually and as secretary of said Association, Frank A. Seiser, deceased, an individual who heretofore did business under the firm name and style of Acme Builders' Supply Co., Britton Stone & Supply Corporation, Gaetano Della Pietra, and The Irondequoit Coal & Supply Co., are, and have been, to monopolize in said respondents or some of them (except those specifically named in this paragraph), the business and industry of dealing in and distributing building materials, including vitrified sewer pipe, ultimately consumed at or in the vicinity of Rochester, N. Y., to unreasonably lessen, eliminate, restrain, stifle, hamper and suppress competition in said industry; to deprive the purchasing and consuming public, including municipalities and other Government agencies or projects of the advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free, fair, and unrestrained competition in such industry; to otherwise operate as a restraint in trade and a detriment to the freedom of fair and legitimate competition in said industry and to obstruct the natural flow of trade in building materials, including vitrified sewer pipe, in the channels of commerce, among and between the several States of the United States.

PAR. 7. The Commission further finds that as to respondents The Robinson Clay Product Co., Universal Sewer Pipe Corporation, Rochester Builders Supply Association and Edwin C. Kaelber, individually and as secretary of said Association, Gaetano Della Pietra and The Irondequoit Coal & Supply Co., there is no evidence in the record in support of the allegations of the complaint.

CONCLUSION

The aforesaid acts and practices of the respondents The Robinson Clay Product Co. of New York, a corporation; Russell L. Pinkley and Urban G. Weckesser, copartners doing business under the firm name and style of Empire Clay Products Co.; American Clay & Cement Corporation, a corporation; Nazareth L. Montalbine and George E. Hartman, copartners doing business under the firm name and style of Barnard Service & Supply Co.; Comac Builders' Supply Corp., a corporation; Domine Builders Supply Co., Inc., a corporation; John G. Bianchi, an individual doing business under the firm name and style of Flower City Builders' Supply Co.; Goodstone Manufacturing Co., Inc., a corporation; H. D. Grey Corporation, a

corporation; Hutchison-Rathbun, Inc., a corporation; Keystone Builders Supply Co., Inc., a corporation; Mann Builders Supply Co., Inc., a corporation; Leslie E. Fields and Lena Matthews, copartners doing business under the firm name and style of Matthews & Fields; R. B. Mason, an individual doing business under the firm name and style of Russell B. Mason Co.; Ardean R. Miller, Inc., a corporation; Monroe Block Co., Inc., a corporation; William Heydweiller, an individual doing business under the firm name and style of Peoples Coal & Lumber Co.; George Rappl and George Hoenig, copartners doing business under the firm name and style of Rappl & Hoenig Co.; Rochester Lime & Cement Corporation, a corporation; Rochester Lumber Co., a corporation; Schaeffer Brothers Builders Supply Co., Inc., a corporation; Stonewood Builders Supply, Inc., a corporation; Theodore H. Swan Brick & Tile Co., Inc., a corporation; Van de Visse & Kildea Lumber Co., Inc., a corporation; Joseph L. Weckesser, an individual; Whitmore-Rauber & Vicinus, a corporation; Sinamus & Beck, Inc., a corporation; Pittsford Lumber Co., Inc., a corporation; and Schreib & Watson, Inc., a corporation, and each of them 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 the respondents named in this paragraph in the sale of building materials, including vitrified pipe, in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in the respondents named in this paragraph the power to control and enhance prices; have tended to create in the respondents named in this paragraph a monopoly in the sale of building materials, including vitrified pipe, in such commerce; have unreasonably restrained such commerce in building materials, including vitrified pipe, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents: The Robinson Clay Product Co. of New York; Russell L. Pinkley and Urban G. Weckesser, copartners doing business under the firm name and style of Empire Clay Products Co.; American Clay & Cement Corporation, a corporation; Nazareth L. Montalbine and George E. Hartman, copartners doing business under the firm name and style of Barnard Service & Supply Co.; Comac Builders' Supply Corp., a corporation; Domine Builders Supply Co., Inc., a corpora-

tion; John G. Bianchi, an individual doing business under the firm name and style of Flower City Builders' Supply Co.; Goodstone Manufacturing Co., Inc., a corporation; H. D. Grey Corporation, a corporation; Hutchison-Rathbun, Inc., a corporation; Keystone Builders Supply Co., Inc., a corporation; Mann Builders Supply Co., Inc., a corporation; Leslie E. Fields and Lena Matthews, copartners doing business under the firm name and style of Matthews & Fields; R. B. Mason, an individual doing business under the firm name and style of Russell B. Mason Co.; Ardean R. Miller, Inc., a corporation; Monroe Block Co., Inc., a corporation; William Heydweiller, an individual doing business under the firm name and style of Peoples Coal & Lumber Co.; George Rappl and George Hoenig, copartners doing business under the firm name and style of Rappl & Hoenig Co.; Rochester Lime & Cement Corporation, a corporation; Rochester Lumber Co., a corporation; Schaeffer Brothers Builders Supply Co., Inc., a corporation; Stonewood Builders Supply, Inc., a corporation; Theodore H. Swan Brick & Tile Co., Inc., a corporation; Van de Visse & Kildea Lumber Co., Inc., a corporation; Joseph L. Weckesser, an individual; Whitmore-Rauber & Vicinus, a corporation; Sinamus & Beck, Inc., a corporation; Pittsford Lumber Co., Inc., a corporation; and Schreib & Watson, Inc., a corporation, in which answers 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 conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents The Robinson Clay Product Co. of New York, a corporation; Russell L. Pinkley, and Urban G. Weckesser, copartners doing business under the firm name and style of Empire Clay Products Co.; American Clay & Cement Corporation, a corporation; Nazareth L. Montalbine and George E. Hartman, copartners doing business under the firm name and style of Barnard Service & Supply Co.; Comac Builders' Supply Corp., a corporation; Domine Builders Co., Inc., a corporation; John G. Bianchi, an individual doing business under the firm name and style of Flower City Builders' Supply Co.; Goodstone Manufacturing Co., Inc., a corporation; H. D. Grey Corporation, a corporation; Hutchison-Rathbun, Inc., a corporation; Keystone Builders Supply Co., Inc., a corporation; Mann Builders Supply Co., Inc., a corporation; Leslie E. Fields and Lena Matthews, copartners doing business under the firm name and style of Matthews & Fields; R. B. Mason, an individual doing business under the firm name and style of Russell B.

Mason Co.; Ardean R. Miller, Inc., a corporation; Monroe Block Co., Inc., a corporation; William Heydweiller, an individual doing business under the firm name and style of Peoples Coal & Lumber Co.; George Rappl and George Hoenig, copartners doing business under the firm name and style of Rapple & Hoenig Co.; Rochester Lime & Cement Corporation, a corporation; Rochester Lumber Co., a corporation; Schaeffer Brothers Builders Supply Co., Inc., a corporation; Stonewood Builders Supply, Inc., a corporation; Theodore H. Swan Brick & Tile Co., Inc., a corporation; Van de Visse Kildea Lumber Co., Inc., a corporation; Joseph L. Weckesser, an individual; Whitmore-Rauber & Vicinus, a corporation; Sinamus & Beck, Inc., a corporation; Pittsford Lumber Co., Inc., a corporation; and Schreib & Watson, Inc., a corporation, their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of building materials, including vitrified pipe, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into and carrying out any understanding, agreement, combination or conspiracy between and among any two or more of said respondents, for the purpose or with the effect of restraining, restricting, or monopolizing, or eliminating competition in the sale in interstate commerce of building materials, including vitrified pipe, and as a part of such understanding, agreement, combination or conspiracy from doing any of the following acts or things:

(*a*) Agreeing to fix and maintain and fixing and maintaining uniform or minimum delivered prices, terms, discounts, and conditions of sale.

(*b*) Inducing or coercing members of the industry to raise the prices quoted by them to the uniform or minimum delivered prices, terms, discounts, and conditions resulting from said understanding, agreement, combination, or conspiracy.

(*c*) Holding meetings among themselves or with any organization or association created by them, or some of them, to devise methods of exerting influence, pressure, or other means of inducing or requiring dealers in building materials, including vitrified pipe, to fix, establish or maintain prices, or to fix, establish and publish prices for building materials, including vitrified pipe, or to abide by or adhere to any uniform price list resulting from said understanding, agreement, combination, or conspiracy.

(*d*) Using and engaging in other cooperative acts and practices in promoting the establishment of and carrying out said understanding, agreement, combination, or conspiracy.

It is further ordered, That this complaint be and is, hereby dismissed as to the respondent Frank A. Seiser, deceased, an individual who formerly did business under the firm name and style of Acme Builders' Supply Co., because of his death.

It is further ordered, That this complaint be, and the same hereby is, dismissed as to respondent Britton Stone & Supply Corporation because of the change of name and ultimate bankruptcy of that concern.

It is further ordered, That the case herein be, and the same hereby is, closed as to respondents The Robinson Clay Product Co., a corporation; Universal Sewer Pipe Corporation, a corporation; Rochester Builders Supply Association, an association of building supply dealers; Edwin C. Kaelber, individually and as secretary of the Rochester Builders Supply Association; Gaetano Della Pietra, an individual; and The Irondequoit Coal & Supply Co., a corporation, without prejudice to the right of the Commission to resume trial of this proceeding as to them should the facts warrant.

It is further ordered, That all of the respondents hereinbefore ordered to cease and desist from the practices described herein 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

NICK A. GEORGE, J. LAWRENCE WALKER AND T. KYLE WOODWARD TRADING AS WALKER & WOODWARD, WALKER & WOODWARD, INC., AND JOHN G. BROWN

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

Docket 4194. Complaint, July 24, 1940—Decision, Jan. 29, 1941

Where an individual engaged in the compounding of his medicinal preparation designated "George's Compound"; two individuals engaged, under agreement with former and prior to April 1939, in sale and distribution of said preparation; and corporation which they organized and of which they were president and vice president, and of which they were principal stockholders, and practices and policies of which they formulated, directed, and controlled, engaged in such sale and distribution, thereafter; and fourth individual, likewise thus engaged, under direction of others hereinbefore referred to; in advertisements of said preparation which they disseminated and caused to be disseminated through the mails, and newspapers and periodicals, and by radio continuities, circulars, leaflets, and other advertising literature, and by various other means in commerce and otherwise, and acting in conjunction and cooperation with each other in carrying out acts and practices hereinafter alleged, and in sale of their said product as aforesaid to purchasers in various other States and in the District of Columbia—

Represented that their said medicinal preparation constituted a cure or remedy, and a competent and effective treatment for numerous ailments, diseases, and conditions of the body; and including, among large number set forth, rheumatism, stomach trouble, colds and tonsillitis, general rundown condition, arthritis and neuritis, high blood pressure, streptococcus infection, paralytic strokes, constipation, trench mouth, female trouble, children's diseases, low blood pressure, pneumonia; and for different forms of poisoning, including uremic, ptomaine, and black widow spider; and disorders due to menopause; and that said product possessed substantial therapeutic value in treatment of all ailments, diseases, and conditions of the body, except cancer and diabetes;

Facts being it possessed no therapeutic properties in excess of affording a stimulus to gastric juices, mild stimulation to the appetite, and temporary and palliative relief for aches and pains; use thereof for rheumatism, colds, influenza, tonsillitis, arthritis, muscular aches and pains, sore throat, headache, fever, or backache resulted only in temporary palliation of attendant pain or discomfort due to its analgesic properties, and it was not a cure or remedy nor adequate or competent treatment for any of said conditions or ailments; use thereof for stomach trouble, sour stomach, gas on the stomach, bloated stomach, indigestion, or gastric disturbances might be of benefit only when they were associated with insufficient flow of gastric juice, and it was not a cure or remedy nor an adequate and

competent treatment for any of said conditions or ailments; and possessed no beneficial therapeutic qualities whatsoever in the treatment of large number of ailments and conditions for which it was claimed to be effective, as aforesaid set forth, and including, among others, appendicitis, hemorrhoids, general run-down condition, neuritis, lumbago, high blood pressure, mumps, kidney trouble, biliousness, nervousness, and children's diseases, except to the extent above set forth;

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 their 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. Randolph W. Branch for the Commission.

Mr. Fred W. Layman, of Casper, Wyo., 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 Nick A. George, an individual; J. Lawrence Walker and T. Kyle Woodward, individually and trading as Walker & Woodward; Walker & Woodward, Inc., a corporation; and John G. Brown, 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, Nick A. George, has his office and principal place of business at Casper, Wyo., his mailing address being Post-office Box 271, Casper, Wyo. Respondents, J. Lawrence Walker and T. Kyle Woodward, trading as Walker & Woodward, have their office and principal place of business at 166 South Center Street, Casper, Wyo. Respondent, Walker & Woodward, Inc., is a corporation organized under the laws of the State of Wyoming, with its office and principal place of business located at 166 South Center Street, Casper, Wyo. Respondent, John G. Brown, has his office and principal place of business at 166 South Center Street, Casper, Wyo.

PAR. 2. Respondent, Nick A. George, is now, and for more than 2 years last past has been, engaged in the compounding and in the sale and distribution of a medicinal preparation designated "George's Compound."

Prior to April 1939 the respondents, J. Lawrence Walker and T. Kyle Woodward, under an agreement with the respondent, Nick A. George, and acting both individually and under the trade name of Walker & Woodward, were engaged in the sale and distribution of said medicinal preparation.

In April 1939 the corporate respondent, Walker & Woodward, Inc., was organized by the respondents, J. Lawrence Walker and T. Kyle Woodward, who are respectively president and vice president of said corporation and the principal stockholders therein. Said individual respondents formulate, direct, and control the practices and policies of said corporation. The corporate respondent is now, and since the date of its organization has been, engaged in the sale and distribution of said medicinal preparation.

Respondent, John G. Brown, is likewise engaged in the sale and distribution of said medicinal preparation, operating under the direction of the other respondents named herein.

All of the respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices hereinafter alleged.

PAR. 3. In the course and conduct of their said business the respondents cause and have caused their said medicinal preparation, when sold, to be transported from their respective places of business in the State of Wyoming 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 their said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their 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.

Through the use of various 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, and other advertising literature, the respondents represent and have represented that their said medicinal preparation is a cure or remedy and a competent and effective treatment for numerous ailments, diseases, and conditions of the human body, including rheumatism, stomach troubles, appendicitis, hemorrhoids, colds, influenza, tonsillitis, general run-down condition, arthritis, neuritis, pleurisy, sciatica, muscular aches and pains, lumbago, sour stomach, high blood pressure, delayed menstruation, mumps, kidney trouble, gas on stomach, bloated stomach, sore throat, streptococcus infection, paralysis and paralytic stroke, constipation, indigestion, dizziness, headaches, diphtheria, coughs, laryngitis, trench mouth, swollen neck, fever, poor complexion, pimples, infantile paralysis, bladder trouble, biliousness, nervousness, female trouble, gastric disturbances, children's diseases, ulcerated stomach, piles, backache, eczema, sinus trouble, hiccoughs, vomiting, prostate disorders, low blood pressure, bad breath, asthma, insomnia, pneumonia, uremic poisoning, tick fever, ptomaine poisoning, black widow spider poisoning, poor circulation, shortness of breath, bronchitis, ulcers, ulcerated mouth and teeth, yellow jaundice, and disorders due to the menopause. Respondents further represent that said preparation possesses substantial therapeutic value in the treatment of all ailments, diseases, and conditions of the human body except cancer and diabetes.

PAR. 5. The foregoing representations are false, deceptive, and misleading. Said preparation is not a cure or remedy for, nor does it constitute a competent or effective treatment for, rheumatism, stomach troubles, appendicitis, hemorrhoids, colds, influenza, tonsillitis, general run-down condition, arthritis, neuritis, pleurisy, sciatica, muscular aches or pains, lumbago, sour stomach, high blood pressure, delayed menstruation, mumps, kidney trouble, gas on stomach, bloated stomach, sore throat, streptococcus infection, paralysis or paralytic stroke, constipation, indigestion, dizziness, headaches, diphtheria, coughs, laryngitis, trench mouth, swollen neck, fever, poor complexion, pimples, infantile paralysis, bladder trouble, biliousness, nervousness, female trouble, gastric disturbances, children's diseases, ulcerated stomach, piles, backache, eczema, sinus trouble, hiccoughs, vomiting, prostate disorders, low blood pressure, bad breath, asthma, insomnia, pneumonia, uremic poisoning,

tick fever, ptomaine poisoning, black widow spider poisoning, poor circulation, shortness of breath, bronchitis, ulcers, ulcerated mouth or teeth, yellow jaundice, or disorders due to the menopause. In truth and in fact, respondents' preparation possesses no therapeutic value in the treatment of any ailment, disease, or condition of the human body, in excess of such slight temporary and palliative relief for minor aches and pains as may be afforded by the analgesic properties of said preparation.

PAR. 6. 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 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 respondents' 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 the 24th day of July 1940, issued and subsequently served its complaint in this proceeding upon said respondents, Nick A. George, J. Lawrence Walker, T. Kyle Woodward, Walker & Woodward, Inc., a corporation, and John G. Brown, 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, respondents filed their answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that 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 ap-

proved, 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, Nick A. George, has his office and principal place of business at Casper, Wyo., his mailing address being Post Office Box 271, Casper, Wyo. Respondents, J. Lawrence Walker and T. Kyle Woodward, trading as Walker & Woodward, have their office and principal place of business at 166 South Center Street, Casper, Wyo. Respondent, Walker & Woodward, Inc., is a corporation organized under the laws of the State of Wyoming, with its office and principal place of business located at 166 South Center Street, Casper, Wyo. Respondent, John G. Brown, has his office and principal place of business at 166 South Center Street, Casper, Wyo.

PAR. 2. Respondent, Nick A. George, is now, and for more than 2 years last past has been, engaged in the compounding and in the sale and distribution of a medicinal preparation designated "George's Compound."

Prior to April 1939 the respondents, J. Lawrence Walker and T. Kyle Woodward, under an agreement with the respondent, Nick A. George, and acting both individually and under the trade name of Walker & Woodward, were engaged in the sale and distribution of said medicinal preparation.

In April 1939, the corporate respondent, Walker & Woodward, Inc., was organized by the respondents, J. Lawrence Walker and T. Kyle Woodward, who are respectively president and vice president of said corporation and the principal stockholders therein. Said individual respondents formulate, direct, and control the practices and policies of said corporation. The corporate respondent is now, and since the date of its organization has been, engaged in the sale and distribution of said medicinal preparation.

Respondent, John G. Brown, is likewise engaged in the sale and distribution of said medicinal preparation, operating under the direction of the other respondents named herein.

All of the respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices hereinafter alleged.

PAR. 3. In the course and conduct of their said business the respondents cause and have caused their said medicinal preparation, when sold, to be transported from their respective places of business

in the State of Wyoming 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 their said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating and have caused and are now causing the dissemination of 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 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.

Through the use of various 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, and other advertising literature, the respondents represent and have represented that their said medicinal preparation is a cure or remedy and a competent and effective treatment for numerous ailments, diseases, and conditions of the human body, including rheumatism, stomach troubles, appendicitis, hemorrhoids, colds, influenza, tonsillitis, general run-down condition, arthritis, neuritis, pleurisy, sciatica, muscular aches and pains, lumbago, sour stomach, high blood pressure, delayed menstruation, mumps, kidney trouble, gas on stomach, bloated stomach, sore throat, streptococcus infection, paralysis and paralytic stroke, constipation, indigestion, dizziness, headaches, diphtheria, coughs, laryngitis, trench mouth, swollen neck, fever, poor complexion, pimples, infantile paralysis, bladder trouble, biliousness, nervousness, female trouble, gastric disturbances, children's diseases, ulcerated stomach, piles, backache, eczema, sinus trouble, hiccoughs, vomiting, prostate disorders, low blood pressure, bad breath, asthma, insomnia, pneumonia, uremic poisoning, tick fever, ptomaine poisoning, black widow spider poisoning, poor circulation, shortness of breath, bronchitis, ulcers, ulcerated mouth and teeth, yellow jaundice, and disorders due to the menopause. Re-

spondents further represent that said preparation possesses substantial therapeutic value in the treatment of all ailments, diseases, and conditions of the human body except cancer and diabetes.

PAR. 5. The foregoing representations are deceptive and misleading. In truth and in fact respondents' preparation possesses no therapeutic properties in excess of affording a stimulus to the flow of gastric juice, a mild stimulation to the appetite, and a temporary and palliative relief for aches and pains. It possesses no beneficial therapeutic qualities whatsoever in the treatment or relief of appendicitis, hemorrhoids, general run-down condition, neuritis, pleurisy, sciatica, lumbago, high blood pressure, delayed menstruation, mumps, kidney trouble, streptococcus infection, paralysis, paralytic stroke, dizziness, diphtheria, coughs, laryngitis, trench mouth, swollen neck, biliousness, nervousness, female trouble, children's diseases (except to the extent set forth in the following subparagraphs), ulcerated stomach, eczema, sinus trouble, hiccoughs, vomiting, prostate disorders, low blood pressure, bad breath, asthma, insomnia, pneumonia, uremic poisoning, tick fever, ptomaine poisoning, black widow spider poisoning, poor circulation, shortness of breath, bronchitis, ulcers, ulcerated mouth or teeth, yellow jaundice, or disorders due to the menopause.

The use of said preparation for rheumatism, colds, influenza, tonsillitis, arthritis, muscular aches and pains, sore throat, headache, fever, or backache results only in a temporary palliation of the attendant pain or discomfort due to its analgesic properties, and it is not a cure or remedy nor an adequate or competent treatment for any of the said conditions or ailments.

The use of said preparation for stomach trouble, sour stomach, gas on the stomach, bloated stomach, indigestion, or gastric disturbances may be of benefit only when they are associated with an insufficient flow of gastric juice, and it is not a cure or remedy nor an adequate and competent treatment for any of the said conditions or ailments.

PAR. 6. The use by the respondents of the foregoing deceptive and misleading statements and representations with respect to their said preparation, disseminated as aforesaid, 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 respondents' 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, the answer of the respondents, and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or 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 its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Walker and Woodward, Inc., a corporation, its officers, and J. Lawrence Walker and T. Kyle Woodward, individually and trading as Walker and Woodward, or trading under any other name, and Nick A. George and John G. Brown, and respondents' represetatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' medicinal preparation designated "George's Compound" or any other medicinal preparation of substantially similar composition 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 advertisement represents, directly or through inference, (*a*) that said preparation constitutes a cure or remedy for, or possesses any therapeutic value in the treatment of, appendicitis, hemorrhoids, general rundown condition, neuritis, pleurisy, sciatica, lumbago, high blood pressure, delayed menstruation, mumps, kidney trouble, streptococcus infection, paralysis, paralytic stroke, dizziness, diphtheria, coughs, laryngitis, trench mouth, swollen neck, biliousness, nervousness, female trouble, children's diseases (except to the extent hereinafter set forth), ulcerated stomach, eczema, sinus trouble, hiccoughs, vomiting, prostate disorders, low blood pressure, bad breath, asthma, insomnia, pneumonia, uremic poisoning, tick fever, ptomaine poisoning, black widow spider poisoning, poor circulation, shortness of breath, bronchitis, ulcers, ulcerated mouth or teeth, yellow jaundice or disorders due to the menopause; (*b*) that said preparation is a cure or remedy for rheuma-

tism, colds, influenza, tonsillitis, arthritis, muscular aches or pains, sore throat, headache, fever, or backache, or that said preparation possesses any therapeutic value in the treatment of any of said ailments and conditions, in excess of affording temporary relief from the pain or discomfort attendant thereto; (*c*) that said preparation is a cure or remedy for stomach trouble, sour stomach, gas on the stomach, bloated stomach, indigestion or gastric disturbances, or that said preparation possesses any therapeutic value in the treatment of any of said conditions, in excess of affording a stimulus to the flow of gastric juice in those cases in which said conditions are associated with an insufficient flow of gastric juice; (*d*) that said preparation possesses any therapeutic value in the treatment of any ailment, disease, or condition of the human body, in excess of affording a stimulus to the flow of gastric juice, a mild stimulus to the appetite, and a temporary and palliative relief from aches and pains.

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.

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

J. HERBERT BLACKHURST, DOING BUSINESS AS UNIVERSITY PRESS

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

Docket 4375. Complaint, Nov. 13, 1940—Decision, Jan. 29, 1941

Where an individual engaged, under trade name "University Press," in sale of books and other printed matter used in classroom instruction, to purchasers in various other States and in the District of Columbia—

Represented, directly or by inference, through use of words "University Press" in trade name under which he conducted his business and which he featured on printed matter above referred to, and on stationery and other advertising matter disseminated among prospective customers in various States and in said District, that his business was owned, conducted, or supervised by a university or other institution of higher learning, facts being it was not thus owned, controlled, or supervised;

With tendency and capacity, through use of word "University" by said individual as part of his trade name, to mislead and deceive members of purchasing public situated in the various States and in said District into mistaken and erroneous belief that his business was owned, conducted, or supervised by a university or other institution of higher learning, and to cause them, as result of such erroneous belief, engendered as above set forth, to purchase 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. L. E. Creel, Jr., for the Commission.

Mr. Scott Rowley, of Des Moines, Iowa, 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. Herbert Blackhurst, an individual, trading and doing business under the name University Press, 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. Herbert Blackhurst, is an individual trading and doing business under the name University Press. His

principal office and place of business are at Des Moines, Iowa. Respondent is now, and for more than 1 year last past has been, engaged in the sale of books and other printed matter used in classroom instruction.

In the course and conduct of his business, respondent causes said printed matter, when sold, to be transported from his place of business in the State of Iowa 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 printed matter in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course of the operation of his business as aforesaid, respondent has used the words "University Press" as and for the trade name under which he has conducted his business. He has featured this trade name on said printed matter, and on stationery and other advertising matter which have been disseminated among prospective customers located in various States of the United States and in the District of Columbia.

By means of the use of the word "University" in his said trade name, the respondent represents that his business is owned, conducted, or supervised by a university or other institution of learning. By means of the use of the word "Press" in his said trade name, respondent represents that he owns, operates, or controls a printing establishment wherein the printed matter he sells is printed.

PAR. 3. In truth and in fact, the respondent's business is not owned, controlled, or supervised by any university or institution of learning. Respondent does not own, operate, or control a printing press or printing establishment. The printed matter which he offers for sale is printed for him under contract by a printing establishment which he does not own, operate, or control.

PAR. 4. The use by respondent of the aforesaid false, misleading, and deceptive trade name has the tendency and capacity to, and does, mislead and deceive members of the purchasing public situated in the various States of the United States and in the District of Columbia into the mistaken and erroneous belief that his trade name truthfully describes his business.

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 13th day of November 1940, issued and subsequently served its complaint in this proceeding upon said respondent, J. Herbert Blackhurst, an individual trading and doing business under the name University Press, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 3, 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, J. Herbert Blackhurst, 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, J. Herbert Blackhurst, is an individual, formerly trading and doing business under the name University Press. His principal office and place of business are located in the city of Des Moines, State of Iowa. Respondent is now and has been since October 31, 1940, operating by means of a corporation designated Blackhurst Book Sales, Inc., an Iowa corporation. Respondent is now and for more than 1 year last past has been engaged in the sale of books and other printed matter used in classroom instruction.

In the course and conduct of his business respondent has caused said books and printed matter when sold to be transported from his place of business in the State of Iowa to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent at all times mentioned herein has maintained a course of trade in said printed matter in commerce among

and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course of the operation of his business as aforesaid, respondent has used the words "University Press" as and for the trade name under which he has conducted his business. He has featured this trade name on said printed matter and on stationery and other advertising matter which has been disseminated among prospective customers located in various States of the United States and in the District of Columbia. The trade name University Press was used by respondent up to and including October 31, 1940, but was discontinued on that date.

By means of the use of the word "University" in his said trade name the respondent represented directly or by inference that his business was owned, conducted, or supervised by a university or other institution of higher learning.

PAR. 3. In truth and in fact, the respondent's business was not owned, controlled, or supervised by any university or institution of learning.

PAR. 4. The use by respondent of the word "University" as part of his trade name had the tendency and capacity to mislead and deceive members of the purchasing public situated in the various States of the United States and in the District of Columbia into the mistaken and erroneous belief that respondent's business was owned, conducted, or supervised by a university or other institution of higher learning, and to cause them to purchase respondent's products as a result of such erroneous 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, 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, J. Herbert Blackhurst, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of classroom books or other printed matter 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 that his business is owned, conducted, or supervised by a university or other institution of higher learning;

2. Using the word "University," or any other word or words of similar import and meaning, as part of any trade or corporate name under which said products are 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

SHAPIRO FELT RUG COMPANY, TRADING UNDER ITS OWN NAME AND ALSO AS ESTA HAT COMPANY, AND WM. SHAPIRO, MORRIS SHAPIRO AND SARAH SHAPIRO, INDIVIDUALLY AND AS OFFICERS OF SHAPIRO FELT RUG COMPANY[1]

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

Docket 2647. Complaint, Aug. 16, 1939[2]—Decision, Jan. 30, 1941

Where a corporation and three individuals, who were general officers thereof, and one of whom, as vice president and treasurer, managed, controlled, and dominated its corporate affairs and activities with respect to unfair and deceptive acts and practices below set forth, engaged in manufacture of novelty hats and caps from old, worn, and previously used felt hat bodies purchased by them, through cleaning, steaming, ironing, and shaping, and then fitting with new trimmings, sweat bands, and size labels, such bodies—

Sold, to retailers and to jobbers and wholesalers, by whose retailer vendees they were sold to purchasing public, their said products which, after being thus processed and treated, had appearance of new novelty hats and caps made from felts and other materials which had never been worn or used, with no label, marking, or designation stamped thereon to indicate to purchasing public that said hats and caps were in fact made from old, worn, and previously used hat bodies which had been cleaned and renovated by them, and which, sold and resold as aforesaid, were sold to purchasing public by retail dealers therein without disclosing facts aforesaid, and under such circumstances as to indicate that they were in fact new hats and caps, and failed, through use of phrase "Made Over" stamped or embossed on their products, to disclose to members of purchasing public that said products were made as aforesaid from old, worn, and previously used, rather than from shop-worn, hats, or new material never used or worn, as made by manufacturers from new, but shop-worn, discolored, or otherwise unsalable, hats, or those marked or defaced, with much 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 said products were made from new and unused materials or from new, but shop-worn, hat bodies which had never been worn or used, and into purchase, because of erroneous and mistaken belief aforesaid, of substantial number of such hats and caps, nature of which,

[1] Consent order originally entered in this matter on January 3, 1936, and reported in 21 F. T. C. 741 was set aside by Commission order on August 16, 1939, 29 F. T. C. 1422.

[2] Amended and supplemental.

as made from materials which were not new, would not be disclosed by hat purchaser's casual examination:

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. Robert S. Hall*, trial examiner.

Mr. Robert Mathis, Jr. for the Commission.

Mr. Benjamin Arons, 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 Shapiro Felt Rug Co., a corporation, trading under its own name and also trading as Esta Hat Co., and Wm. Shapiro, Morris Shapiro, and Sarah Shapiro, individually and as officers of Shapiro Felt Rug Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, Shapiro Felt Rug Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in the city of Newark, in said State. The officers of said corporation are respondents, Wm. Shapiro, president, Morris Shapiro, vice president and treasurer, and Sarah Shapiro, secretary, and as such manage, control and dominate its corporate affairs and activities as to the acts and practices herein alleged. Said respondents Shapiro Felt Rug Co., trading under its own name and also trading as Esta Hat Co., and Wm. Shapiro, Morris Shapiro, and Sarah Shapiro, individually and as officers of Shapiro Felt Rug Co., are now, and for more than 1 year last past have been, engaged in the business of manufacturing hats and caps from old, worn, and previously used hats, and other used materials, and of selling the same to retailers, jobbers, and wholesale dealers in various States of the United States and in the District of Columbia. All of said respondents have their office and principal place of business in the city of Newark, State of New Jersey. Respondents cause, and at all times mentioned herein have caused, such hats and caps to be transported from their place of business in the city of Newark and 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, as described in paragraph 1 hereof, the respondents buy old, worn, and previously used felt hats. The old, worn, and previously used felt hat bodies are cleaned, steamed, ironed, and shaped by respondents and then fitted with new trimmings, sweat bands, size labels, and sold by respondents to retailers, 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 manufactured by respondents into hats or caps and, in some instances, fitted with new trimmings, sweat bands and size labels, as described in paragraph 2 hereof, have the appearance of new hats and caps, manufactured from felts and other materials which have never been worn or used, and said hats and caps are sold by respondents to retailers, and to jobbers and wholesale dealers, without any label, marking or designation stamped thereon to indicate to the purchasing public that said hats and caps are in fact manufactured from old, worn, and previously used hat bodies 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 hat bodies and other materials which have been previously 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 and operation of their business, respondents use various words and names in designating said products. Respondents cause said words and names to be embossed or stamped on sweat bands which are attached to said hats or caps. Immediately under said words and names used by respondent in designating said hats and caps respondents have caused to be stamped or embossed the words "made over" and in some instances respondents have caused the words "made over" to be stamped on the size labels which are affixed to the sweat bands in said hats and caps.

It is the practice of various manufacturers of hats and caps to manufacture hats and caps from previously used hat bodies, and from new hat bodies obtained from new but shopworn hats as well as from newly manufactured materials. Shopworn hats are new hats which have been reclaimed from merchant's shelves by said hat and cap manufacturers and which have never been worn or used.

Said shopworn hats are cleaned, steamed, and renovated by such hat and cap manufacturers in the same manner as hats and caps 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 the 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, as distinguished from hats and caps made from shopworn hat bodies or newly manufactured felts which have never been worn or used.

PAR. 4. The use by respondents 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, retail dealers, and members of the purchasing public into the erroneous and mistaken beliefs that the said hats and caps are manufactured from new and unused materials or made from new but shopworn hat bodies which have never been worn or used and into the purchase of a substantial number of such hats and caps because of such erroneous and mistaken beliefs.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 16, 1939, issued and subsequently served its amended and supplemental complaint in this proceeding upon the respondents Shapiro Felt Rug Co., a corporation, trading under its own name and also trading as Esta Hat Co., and Wm. Shapiro, Morris Shapiro, and Sarah Shapiro, individually and as officers of Shapiro Felt Rug 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 and the filing of an answer which admitted all the material allegations of the complaint by Morris Shapiro, individually and as an officer and director of Shapiro Felt Rug Co., a corporation, 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 the complaint by Benjamin Arons, attorney for the respondents William Shapiro and Sarah Shapiro, individually and as officers of Shapiro Felt Rug Co., a

corporation, 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, testimony and other evidence and brief in support of the complaint (respondents not having filed a brief) and the oral argument of counsel aforesaid; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Shapiro Felt Rug Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in the city of Newark, in said State. The officers of the corporation are respondents, Wm. Shapiro, president; Morris Shapiro, vice president and treasurer; and Sarah Shapiro, secretary; Morris Shapiro as vice president and treasurer, manages, controls, and dominates the corporate affairs and activities of the respondent corporation with respect to the unfair and deceptive acts and practices set forth herein. Respondents, Shapiro Felt Rug Co., trading under its own name and also trading as Esta Hat Co., and Wm. Shapiro, Morris Shapiro, and Sarah Shapiro, individually and as officers of Shapiro Felt Rug Co. are now, and for more than 1 year last past have been, engaged in the business of manufacturing novelty hats and caps from old, worn, and previously used hats, and of selling the same to retailers, jobbers, and wholesale dealers in various States of the United States and in the District of Columbia. All of the respondents have their office and principal place of business in the city of Newark, State of New Jersey. Respondents cause, and at all times mentioned herein have caused, such hats and caps, when sold, to be transported from their place of business in the city of Newark and State of New Jersey to 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 as described herein, the respondents buy old, worn, and previously used felt hat bodies which are cleaned, steamed, ironed, and shaped by respondents into novelty hats and caps and then fitted with new trimmings, sweat bands, size labels, and sold by respondents to retailers, jobbers, and

wholesale dealers who in turn sell such products to the purchasing public.

PAR. 3. The Commission finds that these old, worn, and previously used hat bodies, after having been manufactured by respondents into novelty hats or caps and, in some instances, fitted with new trimmings, sweat bands, and size labels, as described herein, have the appearance of new novelty hats and caps, manufactured from felts and other materials which have never been worn or used. Said products are sold by respondents to retailers, and to jobbers and wholesale dealers, without any label, marking or designation stamped thereon to indicate to the purchasing public that said hats and caps are in fact manufactured from old, worn, and previously used hat bodies 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 hat bodies and other materials which have been previously worn and then cleaned and renovated and under such circumstances as to indicate that they are in fact new hats and caps.

PAR. 4. The Commission further finds that the practice of respondents in stamping or embossing their products with the words "made over" fails to disclose to members of the purchasing public that said hats and caps are manufactured from old, worn, and previously used hat bodies rather than from shopworn hats or from new material which has never been used or worn. The casual examination such as a purchaser makes when buying a hat or cap does not disclose to such purchaser that respondents' products are made from materials which are not new.

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 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. 5. The Commission further finds that the use by respondents 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, retail dealers, and members of the purchasing public into the erroneous and mistaken beliefs that the said novelty hats and caps are manufactured from new and unused materials or made from

new but shopworn hat bodies which have never been worn or used and into the purchase of a substantial number of such hats and caps because of such erroneous and mistaken beliefs.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, the answer of respondent, Morris Shapiro, individually and as an officer and director of Shapiro Felt Rug Co., a corporation, which admits the material allegations of the complaint, 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 of the Commission, respondents not having filed brief, and oral argument by Robert Mathis, Jr., counsel for the Commission and by Benjamin Arons, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Shapiro Felt Rug Co., a corporation trading under its own name and also trading as Esta Hat Co., its officers, representatives, agents, and employees, and respondents, Wm. Shapiro, Morris Shapiro, and Sarah Shapiro, individually and as officers of Shapiro Felt Rug 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 hats and caps in commerce, as commerce is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Representing that hats or caps composed in whole or in part of used or second-hand materials are new or are composed of new materials by failure to stamp on the sweat bands thereof in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweat bands, a statement that said products are composed of second-hand or used materials, provided that if sweat bands are not affixed to such hats or caps, then such stamping must appear

on the body of such hats or caps in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

2. Representing in any manner that hats or caps made in whole or in part from old, used, or second-hand materials are new or are composed of new materials.

It is further ordered, That 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 STANDARD PARTS ASSOCIATION, MOTOR & EQUIPMENT WHOLESALE ASSOCIATION, AUTOMOTIVE TRADES ASSOCIATION OF GREATER KANSAS CITY, MISSISSIPPI VALLEY AUTOMOTIVE JOBBERS ASSOCIATION, AND SOUTHWESTERN JOBBERS ASSOCIATION, ET AL.

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

Docket 2942. Complaint, Oct. 14, 1936—Decision, Jan. 31, 1941

Where a voluntary unincorporated trade association engaged as National Standard Parts Association in activities below set forth, and members of which were manufacturers and jobbers of automobile parts and accessories, and business of which members constituted substantial volume of that in the fields concerned in the United States, and which (1) provided that its constitution, bylaws, and amendments thereof should be deemed a contract with it and among its members for the benefit of each and all, to which each member agreed to adhere; (2) fixed definite jobber membership qualifications with respect to operation of regularly established place of business, with stock sufficient to supply demands of trade, and including not less than 12 major lines purchased on regular distributor's basis direct from manufacturer, and similar manufacturer membership qualifications under which, among other things, a person must operate own factory and market product, other than to car manufacturers, "at wholesale only and to legitimate wholesalers," and (3) vested complete supervision of its affairs, between meetings of board of directors and subject at all times to its control, in executive vice president, and important trade ethics committee, to which, entrusted with handling "the dangerous subjects covered by trade ethics, complaints from members, etc., in exceedingly confidential manner," and charged with inviting "the filing of complaints of one member against another for violation of our code of ethics," were referred, with copies to said vice president, such complaints, as aforesaid, including those by jobber members "reporting demoralizing resale schedules by chain stores and mail order houses," etc., complaints against manufacturers charging sales to concerns who were not considered legitimate jobbers, or to jobbers who refused to maintain resale prices suggested by association's manufacturing members;

Acting through its officers, directors, and agents, and, more particularly, said executive vice president and the jobber member chairman of its trade ethics committee, who contacted by mail and in person parties complained against, promoted organization of local jobber groups, and maintenance of contact therewith, assumed initiative in eliminating and correcting difficulties due to price-cutting or price differences as respects action of manufacturer or jobber members, made use of persuasion, along with statement

of association and member position and policy, directed to correction of dissension or difficulties over price-cutting sales to machine shops or others considered not entitled to receive prices quoted, emphasized benefits of "stabilization, standardization, and increased profits," and arranged meetings for reconciling differences and bringing about harmonious action with reference to subjects and objects indicated, and generally made use of their good offices and those of association, and influence thereof with reference thereto—

(*a*) Attempted, pursuant to agreement with its members, to eliminate price competition among and between manufacturers and jobbers of automobile parts and accessories; to prevent the establishment of new and additional competitors of jobber members of said association; and to maintain retail prices suggested by the manufacturing members thereof by causing such manufacturing members (1) to agree among themselves as to the prices at which they would sell their respective products and the prices at which said products should be resold by jobbers; and (2) to confine the sale of their respective products to those jobbers who were designated by the association as the only jobbers to be sold in their respective trade areas by the manufacturing members because of their willingness to maintain the retail prices suggested by said manufacturing members;

(*b*) Attempted, pursuant to agreement with its members, to prevent the establishment of new and additional competitors and to maintain retail prices suggested by said manufacturing members by causing its jobber members concertedly to refuse to buy from manufacturers who would not refrain from selling their products to jobbers or other outlets not designated by its members;

(*c*) Held meetings of groups of its jobber members and other jobbers, for the purpose of threatening, influencing, and coercing manufacturers to confine their sales to those jobbers designated by it as the only jobbers to be sold in their respective trade areas by the manufacturing members because of their willingness to maintain in the retail prices suggested by said manufacturers; and

(*d*) Held meetings of groups of manufacturing members and other manufacturers of automotive parts and accessories for the purpose of fixing prices at which they would sell their respective comparable products and at which said products should be resold by jobbers to retail trade; and

Where an Illinois not-for-profit corporation and general jobbers' association, engaged as Motor & Equipment Wholesale Association in activities below set forth and membership of which was composed wholly of jobbers in all parts of the United States, purchasing various automobile parts and items of equipment from manufacturers for interstate shipment and transportation to their warehouses and places of business, and business of the members of which represented a substantial volume of business concerned throughout the United States;

Acting through its officers, directors, and agents, and particularly its general manager, who had been such since its organization some 9 years theretofore, and through (1) establishment of contact with local associations of jobbers all over the United States, including assumption of initiative in forming such associations where none existed; (2) bulletins, addresses, and member meetings in which were developed and emphasized theme of their concerted strength and influence, and opposition to sale by manufac-

turers through other than established, recognized, and sanctioned channels; (3) the making available to such associations or their members, of charts planned and developed by said general manager to show particular jobbers handling particular lines and items of the various manufacturers, (4) discussion and exchange of information, under provision, as a part of association's "14-Point Program," of "Bureau of Interchange of Jobbers' Experiences on Lines Handled" for use by members; (5) protesting to manufacturers against their warehouse distribution system, under which the warehouse businesses, independently owned and functioning both as warehouse and jobbing house, received extra commission over and above usual jobber's commission, and under which, as asserted, there were new competitors or threats thereof; and (6) advising manufacturers and others of member attitude toward those who did not confine their distribution and sale to established and sanctioned channels—

(*e*) Attempted, pursuant to agreement with its members and those of regional or local associations as hereinafter set forth, to prevent the establishment of new and additional competitors of their members by (1) causing their members concertedly to refuse to buy or threaten to refuse to buy such parts and accessories from manufacturers who would not refrain from selling their products to purchasers not designated by them and their associated regional associations; and (2) exchanging information, through questionnaires and reports circulated by secretary, general manager, or other agent, as to sales policy of manufacturers and jobbers, in order to assist members of their associations in their said concerted refusal to buy from manufacturers above described; and

Where an unincorporated trade association with principal place of business in Kansas City, Mo., and engaged under name Automotive Trades Association of Greater Kansas City in activities below set forth, and membership of which was composed of both manufacturers and jobbers of automobile parts and accessories, of whom many were also members of more than one of associations herein mentioned, and business of which members represented a substantial volume of business concerned; and

Activities and policies of which found expression through (1) reference to grievance committee of said National Association first referred to, of sales by manufacturer to machine shops at jobber prices; (2) provision in its warehouse code of ethics to effect that warehouses would sell only to jobbers who, as therein defined, sell at wholesale and stock line, and subject to various restrictions including written order from jobber stocking line or competitive line, and the billing of orders from factory and not warehouse; (3) cooperation of its former warehouse division with association below referred to and jobbers thereof for purpose of recognizing only legitimate jobbers as "distribution channels," and active opposition, along with that of other, to establishment of jobbing business by manufacturer's agent; (4) complaints to several manufacturers of sales made to said agent at jobbers' prices, with result that he was unable to procure from them requirements for jobbing business at jobbers' prices; and (5) similar opposition by the two associations to contemplated jobbing enterprise by certain machine shop or works which, as result thereof, was unable to obtain in interstate commerce its requirements for jobbing business—

(*f*) Attempted, pursuant to agreement with its members, to prevent the establishment of new competitors of its members, by (1) causing them concertedly

to refuse to buy or threaten to refuse to buy automobile parts and accessories from those manufacturers who would not refrain from selling their products to those not designated by it; and (2) exchanging information, through questionnaires and reports circulated by the secretary, or other agent, as to sales policy of manufacturers and jobbers, for the purpose of assisting members in their concerted refusal to buy from manufacturers above described; and

Where two regional or local associations, included among those with which aforesaid general or Motor & Equipment Wholesale Association of jobbers maintained contact, and made use of in seeking attainment of its objectives, namely, (I) unincorporated, voluntary association of jobbers, located and doing business in the State of Iowa and the southwestern portion of Illinois, and engaged under name Mississippi Valley Automotive Jobbers Association, in activities below set forth, and members of which were in competition with each other and nonmember jobbers; and (II) nonprofit, voluntary unincorporated association of from 17 to 23 jobbers of automotive parts and accessories, operating in Missouri, Kansas, Arkansas, and Oklahoma, or in one or more of said States, and engaged under name Southwestern Jobbers Association, in activities below set forth, and meetings of which were from time to time addressed by the general manager of aforesaid general association of jobbers, and which was frequently furnished with bulletins by said general association, of which some of its own member concerns were also members, and members of which, engaged in purchase of such parts and items of equipment from manufacturers, were engaged in commerce and in actual competition with each other and with nonmember jobbers; and

Activities of which two regional or local associations, as expressed, in case of former, through association secretary and members, and as variously expressed in case of latter, respectively—

(*a*) Included communications to certain manufacturers, together with advice as to members' position as opposed to patronizing any manufacturer directly or indirectly interested in jobbing business, with respect to proposed entry into jobbing business of agent of one of manufacturers addressed, and with respect to certain additional or preferential discounts given by one of manufacturers addressed to latter's warehouse agent, along with intimations or suggestions as to jobbers' attitude in such matters and possible consequences to addressees, by whom desired relief was finally accorded; and

(*b*) Included (1) adoption and maintenance of policy by some members of recognizing only so-called legitimate jobbers as desirable, with result that some manufacturers in other States confined their sales of aforesaid parts and items to such jobbers as were recognized as legitimate within members' territory; (2) opposition, made known to manufacturers concerned, of entry into jobbing business of manufacturer's agent on ground that discounts received by him as such would give him an undue advantage over jobbers not carrying on such dual business, with result that several manufacturers whom said individual had represented refused to sell him merchandise for new enterprise and discouraged his proposed undertaking; (3) adoption of resolutions condemning certain selling plan adopted by certain manufacturer as unfair to jobbers and sending same to said general jobber association

above referred to, and to said National Standard Parts Association, and (4) adoption of other resolutions of censure with respect to "manufacturers' retained warehouse stocks" and "consigned merchandise," to be sent to said general jobber association and regional association and National Standard Parts Association—

(*g*) Attempted, pursuant to agreement with their members and those of aforesaid general or Motor Equipment Wholesale Association, to prevent the establishment of new competitors by (1) causing their members concertedly to refuse to buy or threaten to refuse to buy from those manufacturers who would not confine sales to concerns designated by them and their associated regional association; and (2) exchanging information through questionnaires and reports circulated by secretary, general manager, or other agent, as to sales policy of manufacturers and jobbers, to assist members in such concerted refusal to buy:

Held, That said acts and practices of aforesaid various associations, as above set forth, were to the prejudice of the public and had a dangerous tendency to and actually did hinder and prevent price competition between and among the members of said first-named or National Standard Parts Association in the sale of automobile parts and accessories in commerce, and tended to unreasonably restrain such commerce in said products, and constituted unfair methods of competition.

Mr. Daniel J. Murphy for the Commission.

Wilcox & VanAllen, of Buffalo, N. Y., for National Standard Parts Association, its officers, board of directors and members; together with *Mr. Grover Higgins*, of Jones, Day, Cockley & Reaves, of Cleveland, Ohio, who also represented various directors of said National Standard Parts Association.

Cassels, Potter & Bentley, of Chicago, Ill., for Motor and Equipment Wholesale Association, its officers, board of directors, and members.

Mr. C. R. Barnett, of Kansas City, Mo., for Automotive Trades Association of Greater Kansas City, its officers, board of directors, and members.

Ogren & Clark, of Chicago, Ill., for Mississippi Valley Automotive Jobbers Association, its officers, board of directors, and members.

Mr. Hugh C. Smith, of Washington, D. C., for Southwestern Autotive Jobbers Association, its officers, board of directors, and members.

Complaint

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that National Standard Parts Association, Motor & Equipment Wholesale Association, Automotive Trades Association of Greater Kansas City, Mississippi Valley

Automotive Jobbers Association, Southwestern Jobbers Association, and the officers, directors, and members of said association, hereinafter named and referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it 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 Standard Parts Association, hereafter for convenience referred to as the "Parts Association" is a voluntary unincorporated association, of manufacturers and jobbers of automobile parts and accessories, with its principal place of business at 1420 United Artists Building, Bagley Avenue, Detroit, Mich. The officers and directors of said respondent Parts Association and the members of said association with which they are connected are or have been as follows:

Officers of association:	Name of member concern with which connected
D. W. Rodger, president	The Federal Mogul Corp., Detroit, Mich.
J. B. Muller, senior vice president.	Fort Worth Wheel & Rim Co., Fort Worth, Tex.
Leo F. Hunderup, junior vice president.	Van Norman Machine Tool Co., Springfield, Mass.
Edward P. Chauffalt, executive vice president.	Piston Service Co., Inc., 4430 Cass Ave., Detroit, Mich.
Orville B. Gault, secretary, Wholesaler's Division.	
R. W. Proctor, secretary, Manufacturer's Division.	
Board of directors:	
S. J. Levy	W. Bergman Co., Inc., Buffalo, N. Y.
G. F. Morrissey	Northwest Bearing & Parts Co., Seattle, Wash.
R. M. Allison	Warner Gear Co., Muncie, Ind.
B. Patterson	Thompson Products, Inc., Cleveland, Ohio.
L. F. Woolman	Allen Electric & Equip. Corp., Kalamazoo, Mich.
W. C. Bulette	Brandt-Warner Mfg. Co., York, Pa.
C. G. Keyes	Keyes Supply Co., Ltd., Ottawa, Ontario.
E. B. Conn	Central Electric Co., Hattiesburg, Miss.
V. C. Hossellman	Siferd-Hosselman Co., Lima, Ohio.
L. H. Phelps	Phelps-Roberts Corp., Washington, D. C.
F. S. Durham	Bonney Forge & Tool Works, Allentown, Pa.
L. G. Matthews	Sealed Power Corp., Muskegon, Mich.
W. H. Richardson	Timken Roller Bearing Service & Sales Co., Canton, Ohio.
J. Fischer	Auto Parts & Gear Co., Chicago, Ill.
R. H. Bachman	Bee, Incorporated, Allentown, Pa.
Wm. Christie	Christie & Thomson, Inc., Worcester, Mass.
H. B. Truslow	Richmond Auto Parts Co., Richmond, Va.
F. C. Kip	Automotive Trust Bearings Corp., Chicago, Ill.

PAR. 2. The respondent Motor and Equipment Wholesale Association, hereafter for convenience referred to as the "Equipment Association" is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, and has a membership composed wholly of jobbers. It has its principal place of business at 400 West Madison Street, Chicago, in said State. The officers and members of the board of directors of said respondent Equipment Association and the members of said association with which they are connected are or have been as follows:

Officers of association:	Name of member concern with which connected
E. T. Satchell, president	E. T. Satchell Co., 1041 Hamilton St., Allentown, Pa.
E. R. Seagar, vice president	Pa. Rubber & Supply Co., Cleveland, Ohio.
R. C. Sparks, secretary	Sparks Auto Supply Co., Champaign, Ill.
George N. Lockridge, treasurer.	Kansas City Automobile Supply Co., Kansas City, Mo.
B. W. Ruark, general manager.	Kansas City Automobile Supply Co., Kansas City, Mo.
Board of directors:	
W. H. Metz	William A. Metz Co., Des Moines, Iowa.
David E. Levy	Lite Sales Corp., New York City, N. Y.
G. B. Shearer	Guall, Derr & Shearer Co., Philadelphia, Pa.
S. B. Deen	Nichols, Deen & Gregg Co.
L. T. Wait	Motor Bearings & Parts Co., Raleigh, N. C.
T. A. Walsh	Chanselor & Lyons Store, San Francisco, Calif.
W. R. Crow	Ozburn, Crow & Yantis, Little Rock, Ark.
W. E. Wissler	Wissler Co., Des Moines, Iowa.
G. P. Henderson	Auto Gear and Parts Co., Philadelphia, Pa.
F. H. Floyd	Ward, Floyd Co., Waka, Tex.

PAR. 3. Respondent Automotive Trades Association of Greater Kansas City, hereafter for convenience referred to as Automotive Trades Association is an unincorporated trade association with headquarters and principal office located at 206 East Sixteenth Street, Kansas City, Mo. Its membership is composed of both manufacturers and jobbers. The following are the officers and directors of said respondent Automotive Trades Association:

Officers:	Directors
Charles Berg, president	Harry Coverly.
Jesse Buster, vice president	J. C. Heilman.
Henry Woestemeyer, vice president	H. N. Johnson.
R. A. Welch, vice president	Howard Krimminger.
W. E. Booth, secretary	B. J. Oppenheimer.
Geo. W. Arnold, treasurer	George Tucker.
John Taylor, sergeant at arms	George Tucker.

PAR. 4. Respondent Mississippi Valley Automotive Jobbers Association is an unincorporated trade association and an affiliated regional

group of the respondent Equipment Association. Its membership is composed entirely of jobbers. The officers of said respondent, Mississippi Valley Automotive Jobbers Association and the business concerns with which they are connected are or have been as follows:

W. E. Wissler, president----- Wissler Co., Des Moines, Iowa.
L. E. Graham, secretary----- Van Norman Machine Tool Co., Springfield, Mass.

PAR. 5. The respondent Southwestern Jobbers Association is an unincorporated trade association and an affiliated regional group of the said respondent, equipment association. Its membership is composed wholly of jobbers. The officers of said respondent, Southwestern Jobbers Association and the business concerns with which they are connected are or have been as follows:

L. E. Allman, president----- Ozark Motor & Supply Co., Springfield, Ill.
W. A. Dycke, secretary------- Herman-Brownlow Co., Springfield, Ill.

PAR. 6. The members of respondent associations and of their various affiliated regional groups consist of several hundred corporations, individuals, firms, and partnerships, their number and identity varying from time to time by the separation of some and the addition of others, so that it is impracticable at any given time to name as respondents and bring before the Commission each and all the members without manifest delay, confusion, and inconvenience. Therefore, the Commission names and includes as respondents in this proceeding, both separately and as representatives of all the members of the various respondent associations, the officers, directors, members, and associations set forth and identified in the foregoing paragraphs 1 to 5 inclusive. In many instances the same manufacturers and jobbers maintain membership in more than one of the respondent associations.

PAR. 7. The manufacturing members of said respondent associations in the course and conduct of their business make and sell, and the jobbing members thereof purchase, automobile parts and accessories in various States and cause such parts and accessories to be shipped and transported to warehouses and places of business and to customers of the respective purchasing members, in States other than the State where such commodities were made or originally sold by respondent members. In the course and conduct of such business, respondent members are and have been engaged in commerce among the several States of the United States and in the course of business in such commerce their organized activities have a direct effect upon interstate commerce in automobile parts and accessories. In the

course of such business the said members of respondent associations normally are in actual or potential competition with each other and with nonmembers, jobbers, and manufacturers who market or desire to market automobile parts and accessories.

PAR. 8. The practices and policies of said respondent associations relate to and the business of their members has represented and now represents a substantial part of the total volume of business of all manufacturers and jobbers of automobile parts and accessories throughout the United States. The respondent associations were organized and have continued to exist for the purpose of binding together the largest possible number of competing individuals, partnerships, and corporations, as members in their respective groups and of securing their concerted action for a common end. In the promotion of their common interests respondent manufacturers and jobbers have engaged in the furtherance of a common plan, scheme, and design of said respondent associations and their members to dominate and control the market in said automobile parts and accessories throughout the United States and particularly to control and fix the prices of said articles and to maintain the resale and retail prices of the same throughout the United States.

The respondent members of respondent association have assented to and abided by various policies, practices, rules, regulations, resolutions, agreements, and understandings hereinafter more particularly described and alleged.

PAR. 9. The respondent associations, their officers, directors, agents, and members, for a period of more than 3 years last past, have agreed, conspired, and combined together and with others, and have united in and pursued a common and concerted course of action and undertaking among themselves and with others, for the purpose of eliminating price competition among and between manufacturers and jobbers of automobile parts and accessories, of collusively controlling the price of automobile parts and accessories, of jointly preventing the establishment of new and additional competitors, and for other unlawful purposes. Through and by means of respondent associations, their officers and directors, the respondent members of said associations, with the aid and assistance of other manufacturers and jobbers, have carried out and are still carrying out said agreements, combinations, and conspiracies among themselves and with others, and have thereby fixed and maintained and still fix and maintain uniform prices to be exacted from their customers by the respective manufacturers and jobbers of automobile parts and accessories and

have prevented and still prevent the establishment of new and additional competitors in the sale of said automobile parts and accessories.

PAR. 10. The respondent associations, their officers, directors, and members, pursuant to and for the purpose of carrying out the aforesaid agreements, combinations, and conspiracies among themselves and with others, have done the following acts and things:

(*a*) Agreed that the members of respondent associations acting in concert with themselves and with others, should monopolize or try to monopolize, and they have monopolized or tried to monopolize, the distribution of automobile parts and accessories in the hands of so-called "legitimate jobbers," meaning those who have made known their willingness to maintain the resale prices suggested by the respective manufacturers.

(*b*) Agreed that competing manufacturing members of said associations and nonmember manufacturers concerting with them should from time to time fix, and they have from time to time fixed, uniform or substantially uniform sales prices to jobbers for comparable products, that said manufacturers would issue uniform or substantially uniform resale price lists for such products, and in fulfillment of such agreements they have issued resale price schedules with discounts.

(*c*) Agreed that the said manufacturing members and nonmember manufacturers concerting with them would not change and they have not changed said uniform or substantially uniform resale prices or discounts on comparable products without prior notice and opportunity for other manufacturers concerting with them to make similar changes simultaneously or at substantially the same time.

(*d*) Agreed that the jobber members of said associations and nonmember jobbers concerting with them should, in the selling of all automobile parts and accessories, use and abide by, and they have used and abided by, the uniform or substantially uniform resale prices on comparable products fixed by the respective manufacturers concerting with them.

(*e*) Agreed that the members of said associations and nonmembers concerting with them should suppress or try to suppress and they have suppressed or tried to suppress competition by reducing the number of competitors through the device of requiring a jobber to carry in stock a certain number of major lines of products to become entitled to recognition as a "legitimate jobber" and to the benefits which flow from that recognition, thereby hampering and obstructing or putting out of business a large number of small jobbers throughout the country.

(*f*) Agreed that the members of said associations should be bound and should abide by, and they have been bound and have abided by, the covenants of their application for membership, the bylaws, "codes of ethics," and other regulations and policies of said associations, particularly those designed or having the natural effect of fixing uniform or substantially uniform prices on comparable products, of maintaining uniform or substantially uniform resale prices thereon, and of restricting competition to channels determined by said respondents.

(*g*) Agreed that the policy of said associations in fixing uniform or substantially uniform prices on comparable products and in maintaining uniform or substantially uniform resale prices thereon should be effectuated, and such policy has been effectuated by local and regional group meetings, by association and organization committee meetings, by national shows and otherwise, and by oral agreements and understandings of which only meager and incomplete records should be and have been kept, in order to avoid providing evidence of such agreements and to make difficult their detection.

(*h*) Agreed that the manufacturer members of said respondent associations and nonmember manufacturers concerting with them would not sell and they have not sold their products to any jobber who does not maintain the respective manufacturers' resale price schedules or the suggested resale price on automobile parts and accessories.

(*i*) Agreed to limit the distribution by manufacturers of their products from warehouses maintained by said manufacturers for convenience in distribution, to five places designated by respondents as "warehouse points," and have limited, restrained, and prevented the establishment of such distribution warehouses at other places by threats of boycott and by boycott.

(*j*) Agreed to establish certain places designated by them as "jobbing points" and to recognize only such places as "jobbing points," have established and have recognized only such places as "jobbing points," and thereby have sought to prevent and have prevented by threats of boycott and by boycott, the establishment of jobber competitors at any places other than such jobbing points.

(*k*) Agreed that the jobber members of said associations and nonmember jobbers concerting with them should threaten to boycott and should boycott and they have boycotted individually and in groups acting concertedly those manufacturers of automobile parts and accessories who did not conform to the policies and purposes of respondents, as follows:

Manufacturers who did not or would not refrain from selling their products to jobbers not classed by respondents as "legitimate jobbers" or sold their products to either "legitimate" or "illegitimate" jobbers at any discount greater than the published discount allowed by such manufacturers to the jobber members of said organizations and associations.

Manufacturers who did not or would not refrain from selling their products even at the currently prevailing prices to new or so-called illegitimate jobbers seeking to establish themselves in a territory in competition with the respondent jobbers already there established.

Manufacturers who did not or would not refrain from selling their products at the jobbing discounts contained in their price schedules to buyers classed by respondent jobbers as retailers and not jobbers.

Manufacturers who did not or would not refrain from selling their products to jobbers failing to maintain the manufacturers' suggested resale price schedules in selling automotive parts and accessories to retailers.

Manufacturers who did not or would not fix uniform or substantially uniform resale prices for their products and allow uniform or substantially uniform discounts to jobbers from such uniform or substantially uniform resale price lists on comparable products.

PAR. 11. Each of the respondent associations and the officers, directors, and members of each, as separately organized associations of manufacturers and/or jobbers, has constituted a separate combination and promoted a separate conspiracy for the purpose and with the effect of accomplishing the general objects alleged in paragraphs 8 and 9 hereof within each of such separately organized combinations and conspiracies and have done the acts and things alleged in paragraph 10 of this complaint from time to time independently of similar acts and things done by other respondent associations.

PAR. 12. The aforesaid alleged acts and practices of the respondent have had and still have the tendency and capacity to produce the following results:

To prevent manufacturers from competing among themselves in their prices to the jobbing trade and in their selection of jobbing distributors, to compete with the jobbing distributors of other manufacturers.

To constrain all jobbers of automobile parts and accessories doing business in both interstate and intrastate commerce and particularly the jobbing members of said respondent organizations and associ-

ations, to sell the aforesaid products to their dealer customers, garage owners, fleet owners, and others at uniform resale prices fixed as aforesaid by the respective manufacturers of said products.

To obstruct and prevent the establishment of new jobbers and of new distribution points.

To suppress all price competition in the jobbing of said products particularly among the jobbing members of said associations and further to hinder and restrain price competition on the part of and among all the retail dealer customers of jobbers in selling the ultimate consumer.

PAR. 13. The aforesaid alleged acts and practices thus tended and still tend unduly and unreasonably to hinder, obstruct, and restrain the free and natural flow of trade in the channels of interstate commerce, to enhance prices to the purchasing public and to otherwise deprive the public of the benefits of free and normal competition among and between respondents and their dealer customers and others.

PAR. 14. The above acts and practices are all to the prejudice of the public and of the competitors of respondents and are unfair methods of competition within the meaning and intent of section 5 of an act of Congress, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 14th day of October 1936, issued and served its complaint in this proceeding upon said respondents National Standard Parts Association, Motor & Equipment Wholesalers Association (referred to in the complaint as Motor & Equipment Wholsale Association), Automotive Trades Association of Greater Kansas City, Mississippi Valley Automotive Association (referred to in the complaint as Mississippi Valley Automotive Jobbers Association) and Southwestern Automotive Jobbers Association (referred to in the complaint as Southwestern Jobbers Association), and certain of their officers, directors, and members, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On and between November 2, 1936 and December 16, 1936, the respondents filed their answers in this proceeding. Thereafter separate stipulations were entered into in behalf of each of the five respondent associations, whereby it was

stipulated and agreed that statements of facts signed and executed by John W. VanAllen, as counsel for respondent National Standard Parts Association, William H. King, Jr., of Cassels, Potter & Bentley, as counsel for respondent Motor & Equipment Wholesalers Association, C. R. Barnett, as executive secretary for respondent Automotive Trades Association of Greater Kansas City, John W. Ogren, as counsel for respondent Mississippi Valley Automotive Jobbers Association, and Hugh C. Smith as counsel for Southwestern Automotive Jobbers Association, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulations, said stipulations 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

Part I

PARAGRAPH 1. Respondent, National Standard Parts Association, hereinafter referred to for convenience as N. S. P. A., is a voluntary, unincorporated trade association of manufacturers and jobbers of automobile parts and accessories, with its principal office at 1420 United Artists Building, Bagley Avenue, Detroit, Mich. The officers and directors of said respondent, N. S. P. A., for the years 1936 and 1940, and the members of said Association with which said officers and directors are connected are, or have been, as follows:

1936

Officers of association:	Name of member concern with which connected
J. P. Muller, president	Fort Worth Wheel & Rim Co., Fort Worth, Tex.
L. F. Hossellman, junior, vice president.	Van Norman Machine Tool Co., Springfield, Mass.

Officers of association—Continued.	Name of member concern with which connected
V. C. Hunderup, junior, vice president	Siferd-Hossellman Co., Lima, Ohio.
Edward P. Chalfant, executive vice president (Referred to in complaint as Edward P. Chauffalt).	1420 United Artists Bldg., Detroit, Mich.
Board of Directors:	
E. B. Conn	Central Electric Co., Hattiesburg, Miss.
L. H. Phelps	Phelps-Roberts Corp., Washington, D. C.
F. S. Durham	Bonney Forge & Tool Works, Allentown, Pa.
L. G. Matthews	Sealed Power Corp., Muskegon, Mich.
W. H. Richardson	Timken Roller Bearing Service & Sales Co., Canton, Ohio.
J. Fischer	Auto Parts & Gear Co., Chicago, Ill.
R. H. Bachman	Bee, Incorporated, Allentown, Pa.
H. B. Truslow	Richmond Auto Parts Co., Richmond, Va.
C. C. Bradford	Eaton Products, Inc., Cleveland, Ohio.
F. A. Miller	U. S. Asbestos Div., Raybestos-Manhattan, Inc., Manheim, Pa.
R. D. Black	Black & Decker Manufacturing Co., Towson, Md.
W. P. Nash	Automotive Supply Co., Inc., Visalia, Calif.
V. C. Anderson	Motor & Axle Parts Service, Inc., Chicago, Ill.
R. L. Terry	United Wholesalers, Sioux City, Iowa.
C. E. Prefontaine (honorary)	United Auto Parts, Ltd., Montreal, Quebec.
H. A. Lightner	De Luxe Products Corp., La Porte, Ind.
A. C. Darling	Borg Warner Service Parts Co., Chicago, Ill.
L. F. Wollman	Allen Electric & Equipment Co., Kalamazoo, Mich.
Officers of association;	
V. C. Anderson, president	Motor & Axle Parts Service, Inc., Chicago, Ill.
B. Patterson, senior vice president.	Thompson Products, Inc., Cleveland, Ohio.

Officers of association—Continued.	Name of member concern with which connected
R. L. Terry, junior vice president.	United Wholesalers, Sioux City, Iowa.
C. D. McKim, executive vice president	1420 United Artists Bldg., Detroit, Mich.
Board of Directors:	
R. L. Terry	United Wholesalers, Sioux City, Iowa.
J. E. Adams	Toledo Steel Products Co., Toledo, Ohio.
Franklin C. Bradley	Connecticut Bearings Co., Inc., New Haven, Conn.
A. G. Drefs	McQuay-Norris Mfg. Co. St. Louis, Mo.
Wm. J. Menghini	Springfield Auto Supply Co., Springfield, Ill.
R. M. Meyers	Southern Parts & Bearing Co., Lynchburg, Va.
Victor Allen	Automotive Maintenance Machinery Co., North Chicago, Ill.
H. R. Askins	Phoenix Auto Supply Co., Phoenix, Ariz.
Norman W. Devitt	National Automotive Parts, Ltd., Toronto, Ontario.
W. C. Dodge, Jr.	Ferodo & Asbestos, Inc., New Brunswick, N. J.
Wallace D. DuPre	Wallace D. DuPre, Spartanburg, S. C.
C. C. Secrist	Victor Manufacturing & Gasket Co., Chicago, Ill.
S. M. Prior	Fafnir Bearing Co., New Britain, Conn.
George Scheufler	Scheufler Supply Co., Inc. Great Bend, Kans.
George G. Korshin	South Shore Motive Parts Co., Inc., Lynbrook, L. I., N. Y.
B. F. G. Keam	Monarch Auto Supply Co., Covington, Ky.
W. B. Bradenbaugh	Keystone Reamer & Tool Co., Millersburg, Pa.
Andrew Brown	Andrew Brown Co., Los Angeles, Cal.
E. J. Tesdell	Gates Rubber Co. Denver, Colo.

PAR. 2. The manufacturing members of said respondent association, National Standard Parts Association, in the course and conduct of their business, make and sell, various automobile parts and items of equipment in various States, and cause such parts and items

of equipment to be shipped and transported to warehouses and places of business and to customers, including jobber members, in States other than the State where such commodities were made or originally sold by respondent manufacturing members. Some manufacturers distributed such items through major oil companies, mail order houses, and retail chain stores. The jobber members of said respondent association purchase various automobile parts and items of equipment in various States from manufacturers, including respondent manufacturing members and the automobile parts and items of equipment, so purchased, are shipped and transported to warehouses and places of business in States other than the States where such commodities were manufactured. In the course and conduct of such business, respondent manufacturing members and certain respondent jobbing members are, and have been, engaged in commerce among the several States of the United States and in the course of business in such commerce, their respective operations have a direct effect upon interstate commerce in automobile parts and items of equipment. In the course of such business operations, certain manufacturing members are normally in actual competition with each other and with nonmember manufacturers and certain jobbing members are normally in actual competition with each other and with nonmember jobbers.

PAR. 3. The business of the members of said respondent association has represented, and now represents a substantial volume of business in the manufacture and jobbing of various automobile parts and items of equipment throughout the United States.

PAR. 4. The National Standard Parts Association, in 1933, had 295 jobber members and 194 manufacturing members; of the manufacturing members, 14 were tool manufacturers, 26 were equipment manufacturers and the remainder were replacement part manufacturers.

PAR. 5. The policies of the N. S. P. A. are set forth in a booklet entitled "Constitution, By-Laws, Code of Ethics and Warehousing Code of Ethics." Article IV of the constitution refers to the obligations of members as follows:

> The constitution and by-laws and any amendments thereof hereafter made, shall be deemed a contract with the Association and among the members for the benefit of each and all of them and shall be observed and adhered to by each member; and each member of this Association, by virtue of his membership, covenants and agrees with the Association and with each and every member thereof to observe, adhere to and be bound by the same.

Bylaw I sets forth the qualifications for membership and in part reads as follows:

(*a*) Service parts, jobbers, consisting of any reliable person, firm, or corporation engaged in the wholesale merchandising of standard brands of automotive service parts, tools, and shop equipment having a regularly established place of business in the United States or Canada, carrying a representative stock sufficient to supply the demands of the trade in the territory served (not less than 12 major lines which are being purchased on a regular distributor's basis direct from manufacturer through regular sales mediums), and having a financial responsibility sufficient to carry on their business successfully, and shall not be engaged in the sale of used parts in the same establishment.

(*b*) Any reliable person, firm, or corporation having a regularly established business in the United States or Canada, and having a financial responsibility sufficient to operate the business successfully, and operating his (its) own factory, engaged in the manufacture or finished assembly of one or more standard brands of automotive service parts and materials, tools or shop equipment, and who markets his (its) products, and may also market in the name of the membership which he (it) holds, the entire production of one or more standard trade marked articles not of his (its) own manufacture, but for which he (it) accepts full responsibility, said marketing (other than to car manufacturers) being at wholesale only and to legitimate wholesalers, either through his (its) own sales organization or through a separate sales and (or) service organization, which he (it) owns and controls.

Bylaw 9, entitled "Duties of Officers," is in part as follows:

(*c*) The executive vice president shall have complete supervision of the affairs of the Association between meetings of the Board of Directors, subject at all times to the control of the Board of Directors.

PAR. 6. Local groups have not been given a great amount of publicity by the National Standard Parts Association, however, the Association has always had one or more field men who attended some meetings of local jobbers including members and nonmembers and explained Association activities at various times. Representatives of the National Standard Parts Association at various times included Mr. Tom Duggan, Mr. E. P. Chalfant, and Mr. Orville Gault, who have made circle tours of the country and called together jobbers in the cities visited and outlined to them Association policies.

PAR. 7. An important committee of the N. S. P. A. is the Trade Ethics Committee which was under the chairmanship of H. N. Nigg, a jobber member. The purpose of the Trade Ethics Committee is set forth in a message from C. M. Burgess, the president of N. S. P. A., which message the executive vice president, E. P. Chalfant, on January 26, 1931, at the direction of the president, forwarded to each member of the committee. The aforesaid message is as follows:

It is the intention and recommendation that your Committee handle the dangerous subjects covered by Trade Ethics, complaints from members, etc., in an exceedingly confidential manner, and that you invite the filing of complaints of one member against another for violation of our Code of Ethics as well as violation of common business courtesy.

The Association headquarters as such has not been used enough in years past by its members for this purpose.

Mr. Nigg has discussed with me the plan of operating for your Committee and will explain it to you.

PAR. 8. A bulletin, dated December 18, 1930, issued by Executive Vice President Chalfant to the members of N. S. P. A., on December 18, 1930, refers to the Jobbers' Division which is apparently the name under which the Trade Ethics Committee has also functioned. The said bulletin reads as follows:

JOBBERS ONLY

INVESTIGATION

The chairman of the Jobbers' Division advises that he has received a considerable number of letters from jobber members reporting demoralizing resale schedules by chain stores and mail order houses, with particular reference to the resale of ring and pinion gears to the trade.

PAR. 9. Complaints were made by members and were referred to the Trade Ethics Committee. Copies of complaints were forwarded to the Executive Vice President Chalfant. Chairman Nigg of the Committee contacted, by mail and in person, the parties complained against. Many complaints were made against manufacturers charging that sales were made to concerns who were not considered legitimate jobbers according to the standards of a legitimate jobber as determined by N. S. P. A., or that sales were made to jobbers who refused to maintain the retail prices suggested by the manufacturing members of N. S. P. A.

The executive vice president in a communication to a complaining member, dated October 7, 1930, stated in part as follows:

Herb (Niggs) tackles these problems with the utmost determination, and I do not think he has failed in a single instance in having them satisfactorily cleaned up.

PAR. 10. On October 1930, a complaint was made that the Berkley Manufacturing Co., Inc., of New York City, a member of N. S. P. A., was selling drums to Western Auto Supply Co. of Bay City, Mich.

(*a*) Executive Vice President Chalfant in communications to Chairman Nigg stated in part as follows:

It seems to me, Herb, the real question at issue was Berkley's sale on any basis to the Western Auto Supply Company because our jobber members

resent the competition of the Western Auto Supply Company and while there is no actual restriction against our manufacturer selling them it certainly is bad business for them to do so.

It should not be forgotten that we have kept two or three manufacturers from obtaining membership in the N. S. P. A. because of our prior knowledge that they were selling this chain store outfit and I venture the opinion that Ochrome, now Berkley, would not have been elected had we known at the time of their intention to sell to the Western Auto Supply Company.

(*b*) Chairman Nigg of the Trade Ethics Committee in a communication dated October 30, 1930, to the Berkley Manufacturing Co., Inc., copies of which were sent to Executive Vice President Chalfant and the president of N. S. P. A. in reference to the complaint, stated as follows:

I am in receipt of your communication of October 17th in reference to the protest of one of our Bay City members regarding your Company selling brake drums to the Western Auto Supply Company at Bay City.

I have carefully studied your remarks and you state that you do not know of an instance wherein the Western Auto Supply Company have cut prices to the same degree that the parts jobber sells to the garage and repair trade.

Naturally the garage and repair trade receive a discount to enable them to make a profit on the handling of the parts, and I do not believe that there is any comparison.

For your information I am attaching a sales slip from the Western Auto Supply Company, for one Pontiac 1927 drum, which they sell retail at $1.18 each. Your list price is $1.50, and with your suggested discount of 25%, would make $1.13 to the repair man. If he sold this to his customer to meet competition of the Western Auto Supply at $1.18, he certainly could not hope to make a profit, and in fact the margin there would not allow him to take the time to pick this up.

I wish to call your attention to the fact that at the present time there is an amendment being proposed to the Constitution covering the eligibility of members, and which states, "A manufacturer will be eligible for membership only when he markets his products at wholesale only, and to legitimate jobbers." The jobbing members of the N. S. P. A. have always objected to their manufacturers merchandising through other than the proper channels, and I believe, Mr. Miller, that you stated to the members of the Membership Committee recently when the writer was present, that it was your intention to keep your distribution along these lines.

While there is no machinery in our Association that would make the decisions of any of our Committee mandatory at the present time, I do believe that you will cause yourself more grief by selling concerns of this character, than by keeping your distribution through legitimate jobbing channels.

PAR. 11. Executive Vice President Chalfant and Tom Duggan, a field representative of N. S. P. A., were instrumental in organizing the Southeastern Parts Jobbers Association which consisted of seven local jobbers in Atlanta, Ga. The said Association met once a week

and the members have worked in cooperation and harmony in stabilizing and maintaining discounts to the shop trade and have worked to a considerable extent on cooperative deliveries.

In February 1930, Executive Vice President Chalfant while attending the Southeastern Parts Jobbers Association convention in Atlanta, with President Kiken of N. S. P. A., informed the members of said Association that if it was reported to him that manufacturing members of N. S. P. A. were selling direct to small machine shops in Atlanta, he would cooperate in stopping such a practice.

In March 1930, in response to Executive Vice President Chalfant's statement, five of the jobber members of the Southeastern Parts Jobbers Association, only two of whom were members of the N. S. P. A., complained to Executive Vice President Chalfant that the Logan Gear Co. of Toledo, Ohio, and the I. T. M. Gear Co. were selling the Ideal Machine Shop in Atlanta.

(*a*) Executive Vice President Chalfant in a letter to the Logan Gear Co. dated March 21, 1930, stated in part as follows:

The concern mentioned in their letter as handling your products is not rated by us as a jobber and is not listed as such by any of the jobber indexes, of which we have all in our possession. I have gone through these carefully to check up before making this statement.

It would seem therefore that the protest of the legitimate Atlanta jobbers has some basis for your consideration, bearing in mind that the foundation upon which the N. S. P. A. has been erected is jobber distribution upon a protected basis.

I should be glad to repeat any message you may authorize to the Atlanta group of whom five of the seven have signed the protest.

(*b*) The Logan Gear Co. in its reply dated March 31, 1930, stated in part as follows:

There is one thing that we would like to call to your attention regarding the Atlanta area conditions. These very jobbers who object to our distributing source in their city, altho not codified strictly in the sense of being a jobber, are the very ones who are supporting the localized trade conditions thru warehouses of other manufacturers.

* * * * * * *

We will, however, immediately look into the local situation in Atlanta and have a careful survey made of same and if we can make reasonably proper adjustments in that field, we certainly will discontinue selling other than regular distributing sources.

(*c*) Executive Vice President Chalfant, on April 9, 1930, in a further communication to the Logan Gear Co., stated in part as follows:

It may be true that you have not been afforded the opportunity heretofore of placing your line with one of the five or six representative jobbers in

Atlanta, but I feel quite confident that an evidence of willingness upon your part to correct the condition referred to in the letter of protest, would result in one of the signers of that protest or one of the other members of the local group taking on your line and giving it representative distribution.

I would be quite willing to sound out the group in this respect if you authorize me to do so.

(*d*) Executive Vice President Chalfant, on April 9, 1930, wrote to J. C. Rogers of the Automobile Piston Co., a member of the Southeastern Parts Jobbers Association and signer of the letter of protest, and stated in part as follows:

I think it would be a good idea for you to read the Logan Gear letter at the next meeting of your local group and ascertain if one of the members would be willing to take on the Logan Gear line if they cut off their present distribution in your city.

(*e*) Mr. R. A. Kiken, president of the N. S. P. A., on June 11, 1930, wrote to Executive Vice President Chalfant as follows:

I note from your exchange of correspondence with John Rogers that John has finally become discouraged with any accomplishment in connection with the Logan gear policy at Atlanta, and I am disappointed that this could not be handled.

This is just one of the things that the jobbers complain about in our association, and if you can see any way of reviving this thing and actually handling it by personal conference with the Logan gear crowd, I think it would certainly be advisable to do so. You might even go so far as to tell them that the jobbers are going to have an informal meeting and considerable conversation is going to be built around these things, and certainly they would not want it known to the entire industry that their reputation does not stand in very hot with the Atlanta jobbers.

I hate the thought of using a whip, but I do think we should stay with this Atlanta situation until we lick it.

(*f*) Executive Vice President Chalfant, on June 19, 1930, wrote to President Kiken that he was sending the complete file to Chairman Nigg. His communication in part is as follows:

Herb (Nigg) certainly has done a fine job on the cases submitted to his committee, which has actually functioned as a committee of one because I do not think Herb has consulted the other members of his committee at all. That, however, is up to him.

Chairman Nigg, on June 26, 1930, wrote to F. B. Chester, sales manager of the Logan Gear Co., inviting him to come to Detroit to talk over the matter with Mr. Chalfant and himself suggesting that in this manner a great deal more can be accomplished.

(*g*) Mr. F. B. Chester of the Logan Gear Co., on July 15, 1930, replied to Chairman Nigg in part as follows:

This is just a situation in Atlanta of the kettle calling the pot black. They don't want us to sell anybody but them and they don't want to buy, so a manufacturer is supposedly in a position to exile himself on an island and stay out of their door-yard.

We have a satisfactory account in there that pays their bills and does very well, and if they hadn't been doing some business these old fellows wouldn't notice it. It has always been the writer's intention and thought to carry on with the established jobbing associate interests in all areas where it was possible to do so, but the jobbers in Atlanta want to sit still, take their stuff out of the warehouses of other manufacturers and then carry no stock themselves with which to operate, and keep the other manufacturers out who don't run that peanut stand arrangement in their locality.

It is the little fellow they are kicking about who buys direct from the manufacturer and anticipates his needs and gets them shipped from Toledo, Ohio to Atlanta, Georgia.

(*h*) Chairman Nigg in his reply to Logan Gear Co. on July 15, 1930, stated in part as follows:

While I appreciate, as a parts manufacturer your position in this matter, I cannot help but feel that perhaps your Company is starting a dangerous precedent which may tend to break down the legitimate jobbers' sales channels, and while in this particular case you may feel justified in your action, I do not believe that if you could be convinced that your action contains a great deal of danger to our jobbing structure, that you would not feel differently.

I know that it is the desire of the Association, and most jobbers, to cooperate with their manufacturers, and I also know that the same spirit prevails with the manufacturers. Don't you think that a personal conference between us on this subject would greatly strengthen this cooperation.

Think it over.

PAR. 12. The Central Sales Company of West Virginia, in a communication dated July 24, 1930, wrote to Chairman Nigg of the Trade Ethics Committee in part as follows:

You will recall having requested the writer to send in any grievance which he might have concerning N. S. P. A. activities.

We would like to register one against the Guaranteed Parts Company of New York who are quoting the Mullens Battery Company of this city, N. S. P. A. Jobber prices, and the Mullens Battery Company of this city is simply a battery service station.

We believe we are justified in registering this protest and trust that your committee will follow it up vigorously as we believe possible the quotation can be withdrawn yet without any material damage being done.

Chairman Nigg on July 30, 1930, communicated with the Guaranteed Parts Co., a manufacturer member of N. S. P. A. On August 7 the Guranteed Parts Co. informed Chairman Nigg that:

We have never sold the Mullen Battery Service Company of Charleston, W. Va. and do not intend to do so. If they were quoted prices it was a

mistake but rest assured that the Guaranteed Parts Company sells only to legitimate jobbers.

We want to assure you it is our earnest desire to cooperate with you at all times, and thanking you for calling our attention to this again, we remain * * *

PAR. 13. W. T. Mills, president of Auto Parts Co. of St. Louis, Mo., a jobber member of N. S. P. A., complained to Chairman Nigg of the Grievance Committee of N. S. P. A. that the Greaves Machine Co. of Cincinnati, Ohio, was shipping flywheel ring gears at jobber prices to the Southeast Missouri Machine Shop at Cape Girardeau, Mo.; copy of said complaint was sent to Executive Vice President Chalfant.

(*a*) Executive Vice President Chalfant on July 3, 1930, replied to Auto Parts Co. in part as follows:

Greaves is not a member of the N. S. P. A. and we have not campaigned them in recent years because I have been told that they have been rather up against it financially and that their merchandising policies are unsound, which is quite evidently confirmed by your report.

If Greaves were a member of the N. S. P. A. I could bring considerable pressure to bear upon them to revise their policies, but under the circumstances I am inclined to think that if we wrote them about their merchandising ethics they would merely tell us where to go, and not supply the ticket.

For your information, however, I am glad to tell you that the legitimate manufacturers of flywheel gears are making a sincere and earnest effort to clean up competitive conditions at different points, particularly in respect to price competition.

Herb Nigg, Chairman of the Grievance Committee, has done an outstanding job in this respect and he is certainly to be congratulated.

Recently he brought Bates and Wohlert of the Bates-Wohlert Company of Lansing here to N. S. P. A. Headquarters for a meeting with Bob Paul, our jobber in that city, who were conducting a price war between them, and he not only brought them to a satisfactorily mutual understanding and cleaned up a very grievous condition in Lansing, but he also prevailed upon Bates and Wohlert to readjust their distribution in Chicago, Des Moines and two or three other points from which complaints had come and I am glad to be able to tell you that they have made these corrections in each location, and they are now playing the game strictly according to the rules.

I am also glad to tell you that the Republic Gear Company has been taking a very active part in house-cleaning respecting local price competition in the installation of flywheel gears and with a marked degree of success.

John Dages and Jim Anderson of the Republic were in my office yesterday afternoon and told me what they have been doing and accomplishing in different localities. They had Ray Kauffman over in Chicago for a couple of weeks and now have that situation well in hand.

I know there is quite a bit of dissatisfaction on the part of the jobbers respecting recent changes that the flywheel gear manufacturers have made in their price, but thank heavens, I was not mixed up in that in any way and did not even know it was in the wind. You bet your life I have been keeping

out of these manufacturer group meetings ever since the Eastern Jobbers accused me of the responsibility, about fifteen months ago, of getting the manufacturers of starting gears into a huddle to raise their prices. I did not have a thing in the world to do with that other than, at their request, I had acted as a neutral in getting them together over in Chicago, and very definitely telling them that they could not legally agree on net prices or discounts, and warned them that if they did anything of that kind, there would be "hell a poppin'" with the jobbers.

The following day they had a meeting at which I was not present and it was then that they went ahead with their price changes, but I got the blame for it, even though I had protected myself by warning them.

That concern is not listed in any of our records as a Jobber, and never has been. In fact, the only jobber that is listed in Cape Girardeau is the Auto Tire and Parts Company, and they are rated as such by Chilton, National Credit Office and Motor Maintenance.

(*b*) Chairman Nigg in his reply to Auto Parts Co. in relation to its complaint, stated in part as follows:

I would appreciate your advice immediately whether this Company have indicated the desire to cease selling machine shops direct, or if it is their intention to continue selling so.

You can appreciate that if they discontinue this practice, there is nothing further the Grievance Committee can do, but if they inform you that they will not do so, then it is immediately a matter for attention.

Please keep me in touch, and I assure you that whatever action is necessary, you will immediately get it.

(*c*) The Greaves Machine Co. on July 15, 1930, wrote to the Auto Parts Co. in part as follows:

At this point, we beg to advise that there is not a gear manufacturer in the United States who does not sell to the machine shops. At a meeting of the Flywheel Starter Manufacturers group, this matter was threshed out, and we find that in order to hold the proper volume of sales our plan of distribution must coincide with that of our competitors. In view of these facts, we are forced to sell to machine shops, however, it has been one of our strong policies to protect our jobber accounts that carry a large stock of gears on hand, and toward this point, we pledge to you or any jobber, the protection to which he is rightfully entitled.

PAR. 14. Executive Vice President Chalfant called together a group of time gear manufacturers.

With the knowledge that N. S. P. A. Headquarters has during the past three years sponsored a considerable number of successful group meetings of kindred manufacturers resulting in stabilization, standardization and increased profits to manufacturers and jobbers alike, two manufacturers of the timing gear group have requested that N. S. P. A. Headquarters invite its members to attend a meeting at some central point for the purpose of discussing the problems of your branch of the industry, and perhaps to standardize upon certain methods of manufacturing or merchandising.

Invitations were sent by Executive Vice President Chalfant to the following manufacturers of timing gears to meet in Chicago on April 1, 1929, at the Stevens Hotel:

Dalton & Balch, Inc	Chicago, Ill.
Accurate Gear Company	Springfield, Ohio.
The Celeron Company	Bridgeport, Pa.
Perfection Gear Company	Chicago, Ill.
Timing Gears Corporation	Chicago, Ill.
General Electric Company	West Lynn, Mass.
John C. Hoof & Company	Chicago, Ill.
Cloyes Gear Works	Cleveland, Ohio.
Foot Bros. Gear & Machine Company	Chicago, Ill.
Colorado Gear Mfg. Corp	Denver, Colo.

In regard to the proposed meeting Executive Vice President Chalfant stated as follows:

Such great good to the industry as the result of standardization and such outstanding benefits to the manufacturers have resulted from the group meetings that have been held during the past two years that the members of the Timing Gear group are urgently requested to attend this important meeting, which will in all probability write new pages in the history of your branch of the industry.

Executive Vice President Chalfant proposed a permanent page secretary for the timing gear group, in a letter dated April 3, 1929, to Mr. Dann Ohmer Taber, Piston Manufacturers Research Bureau as follows:

The eight manufacturers of the Timing Gear group met in Chicago on Monday and completed their organization, which comprises four N. S. P. A. members and four who are not members.

I recommended to them to negotiate with you to act as secretary of their group believing that you would have sufficient time to do this in connection with your other duties and Mr. R. T. Cloyes of the Cloyes Gear Company of Cleveland has been delegated to discuss the subject with you, and I am therefore sending him a copy of this letter.

* * * * * * *

We will be glad to give you any cooperation that we can from N. S. P. A. Headquarters.

The proposal of a page secretary was not carried out because the timing gear manufacturers thought it would be too expensive and that they would be able to handle the work themselves.

PAR. 15. Executive Vice President Chalfant again called the meeting of the timing gear group for June 4, 1929; the invitation issued was in part as follows:

This letter conveys a special request that the manufacturers belonging to the Timing Gear Group meet me for an important conference at the Stevens Hotel in Chicago on Tuesday morning, June 4th, at half past nine

The location of the room for the meeting will be posted on the Bulletin Board in the lobby as "N. S. P. A. Headquarters."

An acute situation has been created with the jobbers throughout the country, one which I am confident can be readily corrected at this meeting.

By request of the Eastern Automotive Parts Jobbers Association comprising 63 of the principal N. S. P. A. jobbers on the Eastern seaboard, I met with them yesterday, Sunday the 25th, at the Empire Hotel, New York, and listened attentively to the protests filed by the attending 35 members of the group, and their attitude of mind is best reflected by a letter which, by the unanimous vote of the group, their secretary wrote and placed in my hands, and I quote as follows:

"DEAR MR. CHALFANT:

The members of the Eastern Automotive Parts Jobbers Association desire you to act as their intermediary with the Timing Gear Group of manufacturers to restore the original schedule to jobbers.

F. S. ROBERTS, *Secretary,*
Eastern Automotive Parts Jobbers Association, Inc."

This letter quite correctly voices the flood of protests that has been received at N. S. P. A. Headquarters from the jobbers in all sections of the country.

No protests have been filed against the revision or standardization of list prices, which are quite generally approved by the parts jobbers.

I have in good faith promised the Eastern Group that I will intercede for them and they have fortified me with facts and figures with which to support their request for the original schedule to be restored.

It is for the purpose of presenting the jobbers' side of the story to the members of your group that I am urging each of you to attend the meeting on June 4th if humanly possible, otherwise to write or wire me your willingness to concur in the majority decision.

Prompt acknowledgment of this letter is requested.

PAR. 16. Members of the timing gear Group cooperated with each other in determining sales policies, jobber prices, and discounts and resale prices.

(*a*) John C. Hoof Co. on May 1, 1929, wrote to Cloyes Gear Works in part as follows:

We have been informed that the Diamond State Fibre Company sold the original consignment of gears to the Brown-Cain Company of Kansas City, which the Brown-Cain Company were selling under the trade name of "Velvo."

We have also been informed that Diamond State have discontinued the sale of gears over six months ago to this organization and that we will have no further competition from this source.

(*b*) John C. Hoof Co. on May 3, 1929, wrote to the Cloyes Gear Works in part as follows:

If you will recall, the last time I was in Cleveland, I discussed with you the subject to the Star Products Company, Cleveland, selling the American Gear Associates on a special preferred discount basis. You called up the manager of

this institution, and they informed you they would be glad to meet you and discuss this matter with you.

I am wondering if this has taken place, and if you were successful in getting them to withdraw these special discounts.

(*c*) Cloyes Gear Works, on May 9, 1929, wrote to the John C. Hoof Co. as follows:

Inasmuch as the Company mentioned are not in competition with us, we do not think that we should endeavor to influence their actions in any way.

If they come to us for information, we will be very glad to discuss the matter with them.

(*d*) John C. Hoof Co., on June 1, 1929, wrote to the N. S. P. A., attention E. P. Chalfant, in part as follows:

Replying to your letter of May 27th, and referring to our telephone conversation of Friday, the 31st, the Chicago group of manufacturers of replacement gears will meet with you at 9:30 Tuesday morning at the Stevens Hotel.

I am also writing a note to Mr. Cloyes, the Colorado Gear Company and the Timing Gears Corporation, Chicago, relative to this meeting, as per copy of letter enclosed.

As stated to you, Mr. Balch and Mr. Daskel, and the writer, worked on costs for a number of hours yesterday, and are firmly convinced that the new proposition is not a hardship on the jobber, and to make a change at this time, would mean the difference between no profit and a slight profit to the gear manufacturers.

However, we are going to be very open minded on our discussion with you, and we hope to arrive at some satisfactory basis.

PAR. 17. The meeting of the timing gear group and Executive Vice President Chalfant was held on June 4, 1929. Executive Vice President Chalfant on June 5, 1929, in a communication to R. T. Cloyes of the Cloyes Gear Works, stated as follows:

PERSONAL AND CONFIDENTIAL

For your personal file I am enclosing copy of statement prepared in Chicago on Tuesday, June 4th.

On the final sheet appears an authorized statement to be made verbally to the representatives of the Eastern Automotive Parts Jobbers Association.

A personal interview has been requested by the writer with the president, the secretary and the members of the Grievance Committee of the Eastern Automotive Parts Jobbers Association, to be held in Philadelphia on Friday, June 7th, at which time this report will be *read*.

(Copy)

Due to the increasing necessity to meet our manufacturers' list prices and the fact that a major part of timing gear replacement business is on a very low price basis established by certain car manufacturers, profits have dwindled to a van-

ishing point for all timing gear manufacturers and unless some additional return is possible, these manufacturers must go out of business.

A representative of the laminators who was present, stated that to his direct knowledge, prices had become so low that the business was unprofitable and undesirable and that there was no possible chance of further reduction in raw material costs.

The increase is very much less than the apparent 5% because of the freight allowance, the reduction of list prices on popular numbers to meet car manufacturers' lists and the elimination of service charges from branch stocks. It is calculated that the actual increase to the jobber is less than 2%.

It is estimated that not more than 20% of the volume of the average jobber is at the 40% discount, another 20% at the 35% discount, and the remaining 60% should be on the 25% basis. Based on these estimates, the average gross would be 31.6% or somewhat higher than the 30% which the jobbers have advised would be satisfactory.

It is also pointed out that in T. O. Duggan's booklet entitled "Merchandising Replacement Parts" timing gears and timing chains show a better rate of gross profit than any other line except fan belts. The chart shows timing gears are No. 16 in volume and No. 9 in rank as to gross profits.

The establishment of 25% to the independent repair shop and garage is feasible in any locality where good jobber cooperation exists. The following list shows that in most cases the independent shopman received no discount and in no case does he receive more than 25% from a car distributor or dealer:

Buick	Nothing to garage & repair trade (25% to Authorized Station Only).
Ford	Nothing on Model T. 15% on Model A.
Nash	No discount.
Chrysler	10% to 15%.
Chevrolet	25%.
Dodge	25%.
Marmon	No discount.
Overland	No discount.
Reo	No discount.
Studebaker	10% discount.

It is obvious that the car manufacturer with his larger volume and his elimination of jobber distribution, is plainly in a position to put the independent gear manufacturer and the independent jobber out of business on a price basis if he chooses to do so. Therefore, it is to the interest of the entire replacement industry to suppress any underselling of car manufacturers' established prices. It is believed that if thorough cooperation existed, the car manufacturers could in time be induced to raise their list prices.

While it is natural that a decrease in a garageman's discount will cause some complaint from him, it is obvious that he cannot do better elsewhere and that if the jobbers will stand firmly together it requires no more than a little courage to put this over.

Finally, the change of survival of this line is by full cooperation between the manufacturer and the jobber. Obviously if this business is to persist, both manufacturer and jobber must be paid for his service, plus a profit. Even with this small increase in prices, it is still a case of the survival of the fittest amongst the timing gear manufacturers.

AUTHORIZED VERBAL STATEMENT TO JOBBERS

After serious and constructive consideration of the request of the jobbers for restoration of original schedule, and with a definite willingness to cooperate if it were possible, the timing gear manufacturers I have interviewed decide to give the new schedule a fair and impartial trial to establish its workability.

PAR. 18. (*a*) Cloyes Gear Works on July 5, 1929, wrote to Dalton & Balch, Inc., as follows:

We have your letter of June nineteenth, with reference to the price on your Nash Crank Shaft Gear.

Since you have given us an explanation of the way you furnish the gears, your price of $5.00 would seem all right.

We wish to thank you for your cooperation, and any time we can be of assistance to you along these lines, we will be glad to hear from you.

(*b*) Cloyes Gear Works, on July 17, 1929, wrote to the Dalton & Balch, Inc., as follows:

So far, we have not heard that the Timing Gears Corporation were quoting a discount greater than 50 & 5%.

Inasmuch as the above Company uses Celoron material we believe it would be advisable for the Chicago Group to communicate direct with the Celoron Corporation. We do not anticipate there would be any difficulty in correcting the situation.

We are at present endeavoring to get the Westinghouse Electric & Manufacturing Company to correct the prices of one of the other Chicago manufacturers.

We will be very much interested in hearing from you further, as to just what has been accomplished.

(*c*) J. H. Balch of Dalton & Balch, Inc., on July 26, 1929, wrote in part the following to Cloyes Gear Works:

However, there is one thing that you mention I think ought to be cleared up. You say, "we do not propose to make any special prices on any gears in quantities of less than fifty."

This sort of practice, the writer believes, is entirely out of order. If you start off giving an extra or special on truck gears, or in fact any gears in quantities of fifty, it will only again lead to the disturbing and unsatisfactory unsettled condition that has always existed in the Timing Gear Market until a very few months ago.

(*d*) Cloyes Gear Works, on November 7, 1929, wrote to Dalton & Balch, Inc., as follows:

In reply to your letter of November 5th.

We are very pleased to learn that the Buda Factory are disposed to cooperate on the matter of list prices.

We believe all the Timing Gear Manufacturers should use the same list prices as the Buda Factory provided all Jobbers are able to buy the Gears on a comparable basis. It is our understanding that at the present time Buda is quoting their distributors a discount of 60%. Do you know whether or not this is a fact?

We have just been advised by our New York Agent that Foote Bros. Gear & Machine Company are selling Buda CS6 Generator Gears at $1.00 each in lots of 100 to any jobber. Have you received this same information?

The writer will be located in the Book-Cadillac Hotel at Detroit beginning next Sunday. We believe it would be a good thing to have a meeting early in the week of all the Timing Gear manufacturers to discuss our problems. Would it be possible for you to arrange a meeting on Monday Night?

PAR. 19. A situation arose in Denver about June 1930, relative to the prices of flywheel ring gears. Colorado Gear Co., a manufacturer, was accused by several manufacturers and jobbers of cutting prices.

(*a*) Gall Auto Specialty Co., on June 5, 1930, wrote to the Automotive Gear Works in part as follows:

* * * "I have talked with him about raising his prices as have a good many of the other jobbers in Denver, but he states that at some previous time he had an agreement with some of the Eastern Manufacturers who make Flywheel Ring Gears, and that they did not stick to their agreement, and he is not going to join in with them" * * *

(*b*) Bates Wohlert Co. on October 3, 1930, in a communication to Dirks and Trenam, stated in part as follows:

Regarding the Colorado Gear Company situation, we are confident that they will soon come in line, however, if they do not, all of the gear manufacturers will simply cut the prices to such that they will be forced to.

(*c*) E. W. Trenam of Dirks & Trenam, on December 2, 1930, wrote to Bates Wohlert Co. and replied as follows:

Mr. Bruhn, Mr. McGonagle and I have followed out the program suggested by Mr. Nims (Mr. Nigg)—with about the same results in each case. Mr. Rankin refuses to enter into any kind of agreement with local jobbers as to price, stating that he is running his business and intends to continue to do so. * * *

(*d*) The Springfield Manufacturing Co. on December 18, 1930, wrote to the Colorado Gear Manufacturing Co. in part as follows:

We trust that you will cooperate with us in the matter of stabilizing these prices as we feel sure all the jobbers in Denver will simply adopt these prices and this naturally means smaller profits for everybody concerned.

We feel sure that your good Company will go along with the balance of the Manufacturers on Flywheel Gears in the matter of stabilizing these prices.

(*e*) E. W. Trenam of Dirks & Trenam, on January 5, 1931, wrote to Bates Wohlert Co. in part as follows:

Both Mr. Bruhn and myself have talked turkey to Mr. Rankin of the Colorado Gear Company, with no results except to have him make a still greater cut in prices. Mr. Rankin has undoubtedly taken our talk as bluff, and Mr. Bruhn feels that it is necessary to make good the bluff by giving a few gears to a few of the Colorado Gear Company's best accounts. We both feel that an actual

demonstration of this type will bring Mr. Rankin to terms very quickly and avoid a long-continued price war.

(*f*) Bates Wohlert Co., on January 5, 1931, wrote to Buda Engine Parts Co., Inc., the following letter:

Our Company will cooperate with you with pleasure, and are today sending 50 104-F and 50 100-F gears without cost.

PAR. 20. R. E. Bates, of Bates Wohlert Co., conferred in Denver early in February 1931, with representatives of the Buda Engine Parts Co., Inc. (H. B. Bruhn) and Colorado Gear Co.; at said conference prices were agreed upon.

On February 23, 1931, R. E. Bates of Bates Wohlert Co. forwarded to the Colorado Gear Co. a list of prices which list was not satisfactory to Colorado Gear Co. which stated that the prices forwarded were not the prices agreed upon.

PAR. 21. Frank P. Chester, sales manager of Logan Gear Co., and a manufacturer member of the N. S. P. A., wrote on April 17, 1931, in part as follows:

Now relative to Buda Engine Parts. They are the people who have caused all of the trouble in the Denver area on Flywheel Rings. They succeeded finally through the intervention of some other parties, whom I am not going to mention even confidentially, in getting the Bates Company to send them 200 Rings without charge in order to combat local conditions. A special trip was made to Denver by Bates and one of our other manufacturers to square away this situation. They had a meeting with all of the parties concerned, the different jobbers and every body showed up but the Buda people. They didn't have time or couldn't get there or the man had a lame foot or what have you. The meeting was delayed until the next morning, which he had promised faithfully that he would attend about ten o'clock. The next morning he did not attend and altho he had made promises direct to them on their visit that he would correct conditions promptly, and keep things properly in line, he did not do so.

PAR. 22. The N. S. P. A. in cooperation with certain manufacturers and jobbers undertook to "straighten out a situation" in Chicago, Ill., relative to prices on Flywheel Ring Gears certain jobbers were selling at what were considered low prices.

(*a*) Replacement Parts Factories in a communication dated August 6, 1930, to Bates Wohlert Co., stated in part as follows:

We have your letter of the 4th instant in reference to the gear price which you took up with the N. S. P. A., and as the writer talked with you yesterday, we do hope that some real pressure can be brought to bear on these people to get matters adjusted, and will be glad to hear from you as to what the results might be.

(*b*) Bates Wohlert Co. in a communication dated August 20, 1930, to the Replacement Parts Factories, stated in part as follows:

Regarding the Chicago proposition, will keep after it direct with the Republic Gear as well as the N. S. P. A. and are today writing Chalfant as per copy enclosed.

(*c*) Bates Wohlert Co., again, on August 26, 1930, wrote to the Replacement Parts Factories in part as follows:

I am getting in touch with the other Starter Gear manufacturers regarding the price situation, and feel that we certainly should compete.

PAR. 23. Chairman, H. N. Nigg, of the Trade Ethics Committee of N. S. P. A., called a meeting of Flywheel Gear manufacturers for October 28, 1930, in Chicago. This meeting was postponed to a later date. The following notice was sent out to the Colorado Gear Co.:

(*a*) The Trade Ethics Committee of the National Standard Parts Association, of which the writer is Chairman, have had a number of protests from their jobber members regarding the starter flywheel situation.

We have attempted to amiably settle these differences by contact with our various jobber members and feel that we can come to a much better understanding if the writer, as Chairman of the Trade Ethics Committee, and Mr. R. A. Kiken, the President of the N. S. P. A., could meet with a representative of your company and discuss the various problems that are vital to both the manufacturer and jobber, thereby creating more cooperation between them.

You may be assured that at this meeting there will be nothing discussed that will in any way embarrass you, or that would tend to open either your Company or our Association to criticism.

The Meeting will be held on Tuesday afternoon, October 28th, at 2 P. M. in a parlor suite in the Stevens Hotel in Chicago, which will be registered under the writer's name.

(*b*) The Colorado Gear Co., on October 21, 1930, replied to the N. S. P. A. in part as follows:

We do not know how we can convince you of our sincere desire to get prices up, so we can make a legitimate profit and at the same time be reasonably assured that someone will not come into our territory and undersell us. That would be the finish of all the Flywheel Ring Gear Manufacturers. We could run our plant and have all we could do, if we were allowed to sell all the gears in our legitimate territory. Take Denver, for instance, a thousand miles from other gear Manufacturing centers, and yet we are not allowed to furnish only a part of the requirements.

We have withdrawn from practically all shipments over 500 miles. Our one ambition is to get the cheapest gear up to $1.50 each, which is still the most reasonable priced thing on the market requiring so much work and accuracy that we know of. We know we cannot run counter to existing Federal Laws and don't intend to, but perhaps you can tell us how we can do this job without getting into any trouble. As we said before, our territory is limited and we are satisfied to remain in this territory. Now it looks easy to us for the others to serve their territory and let us serve ours, we will not molest them. But, we must get $1.50 for the cheapest gears.

(*c*) Chairman Nigg in his reply to Colorado Gear Co. of October 29, 1930, stated in part as follows:

We are in receipt of your communication of the 21st instant in answer to our letter, and regret very much that you were unable to attend the meeting in Chicago.

We are also in receipt of your communication of the 25th, wherein you suggest the possibility of organizing a selling company that would purchase all the flywheel gears from the manufacturers, and in this respect wish to advise that this is a matter that is for others to handle than our Association.

You can appreciate that we would open both the Association and the various companies to criticism, and accordingly we would not do anything of that nature.

While your idea appears to have merit, it naturally would have to be consummated by the manufacturers alone.

PAR. 24 (*a*). Replacement Parts Factories on October 29, 1930, wrote to Bates Wohlert Co., in part as follows:

Regarding the flywheel gear situation here in Chicago there has been a little trouble of late through a couple of jobbers quoting prices different to what were recommended at the meeting of the local N. S. P. A. sometime ago here. * * *

* * * * * * *

This we have heard nothing from you on except that you stated that you were going to put it up to the N. S. P. A. We understand that the local gear installers or machine shops here had a meeting the other night and Mr. Nigg of the N. S. P. A. Ethic's department was at the meeting. He and Vic Anderson, I understand, went to the "mat" on several occasions. Mr. Palmer also argued, I believe at this meeting for revision of the price which I feel, only as far as Chevrolet dealers, would be desirable and profitable to everyone connected with the gear business because if they can't sell them at a $2.25 price they can't get the Chevrolet dealer's business and this means that the Chevrolet dealers will put on the 12 13/64 gear and retain that business for renewal, whereas if the part's jobbers get in on that business with the Chevrolet dealer they will recommend for use the 12 1/8 gears which will keep the renewals away from the Chevrolet distributor.

(*b*) Bates Wohlert Co. on October 30, 1930, replied to the Replacement Parts Factories in part as follows:

We are again taking up the flywheel price situation with the N. S. P. A. and are taking the liberty of quoting three paragraphs from your letter which will explain the situation to Mr. Chalfant in the best possible manner.

(*c*) Replacement Parts Factories in reply to Bates Wohlert Co., on November 3, 1930, stated in part as follows:

We have your letter of the 30th advising us that you are again taking up the flywheel price situation at the N. S. P. A. Since writing you on this we have bumped into a condition which we think is rather unfair.

This is in connection with the Perfection Gear Company. We find that Perfection Gear Company in Chicago or metropolitan Chicago is making store-door delivery on all of their deliveries, which includes fly-wheel gears.

We cannot do this and we believe that the Perfection Gear Company is violating its agreement with you by taking advantage of this situation.

(*d*) Chairman Nigg, on November 5, 1930, wrote to the Bates Wohlert Co., in part as follows:

Your communication of the 30th addressed to Mr. Chalfant, has been handed the writer for attention.

Your Chicago representative's statements regarding the Chicago flywheel situation have been carefully studied by the writer, and I believe that I am thoroughly familiar with the situation in Chicago due to my contact at my *two visits* with the Chicago jobbers.

For your information, I visited your account, The National Dealers Service, and saw their invoices wherein they were servicing Chevrolet flywheels at a price of $2.25.

To intelligently explain the Chicago situation, it would take several pages of letter writing, and I believe that I can give you a more clear picture of the conditions prevailing there by talking to you personally. It was my intention to ask you to visit with me at Detroit, but in view of the fact that the Show at Cleveland is so near, I am planning to see you during Show week, and I hope that the result of our meeting will be satisfactory, and that I can clearly outline to you the conditions as they are existing at the present time in the Chicago territory.

PAR. 25. Springfield Manufacturing Co., on November 18, 1930, wrote to the Colorado Gear Co., in part as follows:

The writer advises that so far as he knows all manufacturers of Fly Wheel Gears today have one price on Fly Wheel Gears. It might be possible that one of the smaller manufacturers may not be adhering to this policy. However, we feel sure that any inside price quoting should be eliminated very shortly.

The writer has been in attendance at the N. S. P. A. show during the three days, the 13th, 14th, and 15th, and expects to be in attendance the last three days of the Show. As soon as he returns from the Show he should have some further information regarding prices on Fly Wheel Gears, and will immediately get in touch with you.

PAR. 26. (*a*) Bates Wohlert Co., on December 4, 1930, wrote to Replacement Parts Factories in part as follows:

Mr. Nigg of the National Standard Parts Association seems to feel that the National Dealer's Service is causing a lot of trouble in the Chicago gear situation, and the writer immediately informed them that if we discontinued selling this company, Double Diamond people would immediately step in and give him 70% off. However, Mr. Nigg claims that if we could bring this situation about that he could bring a tremendous pressure on Double Diamond through all members of the N. S. P. A., to the extent that they would be forced to cease selling machine shops at 70% off.

If this could be brought about, it would be wonderful for the Starter Gear industry. Mr. Nigg claims that he wishes one case furnishing him with concrete proof, in order to bring this about. We ask that you get in touch with National Dealers Service, advising them to obtain a shipment or two of gears from Double Diamond at 70% off, also we suggest that we sell them temporarily at 60% off list, however, we will agree to reimburse National Dealers Service.

Part II

PARAGRAPH 1. The respondent, Motor & Equipment Wholesalers Association, referred to in the complaint as Motor & Equipment Wholesale Association, hereinafter referred to for convenience as M. E. W. A., is a corporation, not for pecuniary profit, organized and existing under and by virtue of the laws of the State of Illinois, and has a membership composed wholly of jobbers in all parts of the United States. It had its principal office in 1936 at 400 West Madison Street in Chicago, in said State, and now has its principal office at 309 West Jackson Boulevard, Chicago, in said State. The officers and directors of said Association for the years 1936 and 1940 and the members of said Association with which the said officers and directors are connected are, or have been, as follows:

1936

Officers of association:	Name of member concern with which connected
W. F. Wilkerson, president	Wyoming Automotive Co., Caspar, Wyo.
G. N. Lockridge, vice-president.	Kansas City Automobile Supply Co., Kansas City, Mo.
S. O. Treland, secretary	Grimm-Hansen-Treland, Inc., Chicago, Ill.
A. W. Kleinschmit, treasurer	Automobile Equipment Co., Detroit, Mich.
B. W. Ruark, general manager.	Motor & Equipment Wholesalers Association, 400 W. Madison St., Chicago, Ill.
Board of directors:	
H. D. Vestal	Reinhard Bros. Co., Minneapolis, Minn.
R. C. Sparks	Sparks Auto Supply, Champaign, Ill.
A. A. Swank	Beard & Stone Electric Co., Houston, Tex.
K. R. Crookham	Wiggins Co., Inc., Portland, Oreg.
H. R. Rosen	Franklin Auto Supply Co., Providence, R. I.
R. T. Clapp	R. T. Clapp Co., Knoxville, Tenn.
P. J. Watson	Consolidated Automotive Co., Jacksonville, Fla.
E. O. Hunting	Auto Equipment Co., Denver, Colo.
G. W. Huston	Motor Equipment Co., Wichita, Kan.
G. E. Johnson	Auto Spring & Bearing Co., Roanoke, Va.
H. B. Miller	Lewis Motor Part, Dayton, Ohio.

1940

Officers of association:	
F. G. Stewart, president	Standard Automotive Supply Co., 1835 14th St., NW., Washington, D. C.
H. J. Dinkmeyer, vice president.	Chicago Auto Parts, Inc., 3053 Lawrence Ave., Chicago, Ill.

Officers of association—Continued.

T. C. Tonkin, secretary	Casper Supply Co., 444 S. Center St., Casper, Wyo.
H. D. Howard, treasurer	Williams Hardware Co., 100 Second Ave., N., Minneapolis, Minn.
B. W. Ruark, general manager.	Motor & Equipment Wholesalers Association, 309 W. Jackson Blvd., Chicago, Ill.
R. P. Greene	Littlefield-Greene Corp., 588 Commonwealth Ave., Boston, Mass.
R. J. Alexander	Alexander-Seewald Co., 410 W. Peachtree St. NW., Atlanta, Ga.
W. P. Barnes, Jr	Barnes Motor Supply, 1205 Main St., Baton Rouge, La.
A. C. Johnson	Terre Haute Heavy Hardware Co., 545 N. 13th St., Terre Haute, Ind.
C. S. McClellan	Motor Supply Co., 602 N. Independence Ave., Enid, Okla.
T. R. Stewart	Glasgow-Stewart Co., 204 E. 5th St., Charlotte, N. C.
T. L. Hayes	Ozark Motor & Supply Co., 308 S. Jefferson St., Springfield, Mo.
Thos. I. Jenks	Cumings Brothers, 901 S. Saginaw St., Flint, Mich.
C. W. Hammond	Motor Hardware & Equipment Co., 1133 Columbia St., San Diego, Calif.
R. J. Loock	R. J. Loock Company, 343 N. Gay St., Baltimore, Md.
C. Olesen, Jr	Farrar-Brown Co., Inc., 94 Forest Ave., Portland, Maine.
E. T. Ball	Joseph Strauss Co., 25 High St., Buffalo, N. Y.

Board of directors:

M. L. Yantis	Ozburn Crow & Yantis Co., 9 N. Second St., Fort Smith, Ark.
L. A. Cavanaugh	Motor Car Supply Co. of Canada, 317 Sixth Ave., W., Calgary, Alta., Canada.

PAR. 2. Respondent, Mississippi Valley Automotive Association, is one of the regional groups of respondent M. E. W. A. described in paragraph 8 hereof.

PAR. 3. Respondent, Southwestern Automotive Jobbers Association, is one of the regional groups of respondent M. E. W. A. described in paragraph 8 hereof.

PAR. 4. The members of this respondent association purchase various automobile parts and items of equipment in several States from manufacturers and the automobile parts and items of equipment so purchased are shipped and transported to warehouses and places of business in States other than the States where such commodities were manufactured. In the course and conduct of such business certain

members of this respondent association are, and have been, engaged in commerce among the several States of the United States and in the course of business in such commerce their operations have had, and have, a direct effect upon interstate commerce in automobile parts and items of equipment. Certain members of this respondent association are normally in actual competition with each other and with nonmember jobbers.

PAR. 5. The business of members of this respondent association has represented, and now represents, a substantial volume of business in the jobbing of various automobile parts and items of equipment throughout the United States.

PAR. 6. This respondent association was incorporated under the laws of the State of Illinois; it received its charter on September 12, 1931. The M. E. W. A. was the result of the splitting up of the former Motor Equipment Association (M. E. A.) whose membership consisted both of manufacturers and jobbers; the manufacturers of the former M. E. A. went into the Motors & Equipment Manufacturers Association (M. E. M. A.) and the jobbers joined the Motor and Equipment Wholesalers Association (M. E. W. A.) which is an exclusively jobber organization. Mr. B. W. Ruark has been general manager of the M. E. W. A. since its organization.

PAR. 7. (*a*) At the very beginning of the association, its board of directors became interested in establishing contact with local associations all over the United States. These local associations were referred to as regional groups. In many instances, local associations were already in existence and meetings of these local associations were attended by the president or general manager or some other representative of M. E. W. A. In localities where no local association existed, the general manager of M. E. W. A. took the initiative in having a new association organized. The general bulletin issued September 13, 1932, reported that the entire United States had then been organized into regional groups. M. E. W. A. had no authority or control, legal or otherwise, over any of the regional groups. Through its president and general manager it did, however, endeavor to keep the various regional groups informed concerning problems of the industry which had arisen in other sections of the United States and how they had been dealt with there. On a few occasions, resolutions adopted by regional groups were forwarded to the board of directors of M. E. W. A. for approval. The regional groups at times forwarded the minutes of their meetings to the National Association. Many members of the regional groups were not members of M. E. W. A. Some were members of N. S. P. A.

In July of 1932 and 1933, M. E. W. A. initiated a conference of representatives of the various regional groups to be held in Chicago for discussion and consideration of various industry problems. These meetings were held and were arranged for by M. E. W. A. The board of directors of M. E. W. A. endeavored in this activity to come in contact with and arouse interest in nonmembers of M. E. W. A., who might join. At one time, the M. E. W. A. represented that there were about 700 automotive jobbing houses in the United States included in its membership and the various regional groups. General Manager Ruark, in a bulletin dated January 16, 1933, addressed to members and nonmembers who were members of regional groups, requested said members and nonmembers to fill in distribution charts which charts are discussed later under point 6 of the 14-Point Program of M. E. W. A.

(*b*) Relative to the respondent, Mississippi Valley Automotive Jobbers Association, the following quotation is taken from a letter from General Manager Ruark to W. E. Wissler dated January 6, 1932:

I have received from Mr. L. E. Seltzer, Secy., Mississippi Valley Automotive Jobbers Association, a report on recent meeting at Davenport and will be glad to present the resolutions drawn up at that meeting to the Directors of the Motor & Equipment Wholesalers Association, so that the cooperation of the national association with your group will be thorough and along the lines you desire.

We desire to maintain the closest possible contact with the regional groups and I will appreciate it very much if I may be accorded the privilege of attending your meetings in the future, simply for the purpose of being of the greatest possible assistance and of providing the close working arrangement between the Mississippi Valley group and the M. E. W. A.

(*c*) The following appears in M. E. W. A. General Bulletin No. 4, dated May 18, 1932:

JOBBERS EVERYWHERE RECOGNIZE VALUE OF M. E. W. A.

The dollar, we are told, is now worth $1.52 as compared with its purchasing power in 1926. Values, tangible and intangible, of fundamental merit ARE worth more in times like these. Intelligence, factual knowledge, courage and the will to win are all at a premium under present conditions.

This applies with equal force to organized effort as represented by your trade association. The very conditions which might at times be discouraging give the jobbing industry its opportunity.

In the M. E. W. A., the industry has the means by which it is advancing its interests in a very material way. The organized influence of the more than 200 responsible jobbing concerns, who are the M. E. W. A., augmented by the cooperation of more than 100 others who are members of the several regional groups, is a thing of tremendous value.

Jobbers everywhere know this to be true. They tell us so not only in words but in deeds.

This writer, in ten years' experience in trade association work, can truthfully state that he has never before seen such a widespread and genuine interest in any trade association's activities.

Our correspondence with members has increased enormously, and we are successfully handling many matters of great importance to jobbers which had to be side-tracked or soft-pedaled in the former dual-type association.

PAR. 8. The following appeared in a form letter of the M. E. W. A. Directors to jobbers:

THE 14-POINT PROGRAM of our Association is of very definite value to you. It is designed to protect and promote your business by fighting for clean distribution in the battle between competitive channels. The jobbing industry needs the M. E. W. A. to bring the full power of organized jobber opinion into play for fair play in distribution. The 14-POINT PROGRAM is our method of accomplishing this. It is working and will continue to work in the interests of jobbers and jobber distribution.

General Manager B. W. Ruark of M. E. W. A. delivered an address at an open meeting December 6, 1932, on the M. E. W. A.'s 14-point program; the speech is entitled "The Tall Timbers."

The 14-point program is briefly set forth in an official M. E. W. A. communication, copy of which is as follows:

The M. E. W. A. 14-Point Program for the advancement of jobber distribution, is described as follows:

1. Constant demand that unsound trade practices be eliminated, backed by unified jobber opinion—a powerful influence.

2. Continuous contacts with other trade elements, such as car manufacturers, oil companies, tire companies, etc., to bring about a better appreciation and understanding of jobber distribution.

3. Contacts with manufacturers distributing through jobbers to interpret to them jobber opinion on sales policies and practices.

4. Maintain at high efficiency operations of the 21 Regional Groups, the working units of the national body.

5. Campaign of publicity to keep jobber distribution to the forefront.

6. M. E. W. A. Key-Line Distribution Charts for Regional Groups, through which jobbers may know "Who else is Handling the Line?", which information is being utilized by jobbers to great advantage.

7. Campaign to customers of the jobber emphasizing how the jobber assists them in operating profitably.

8. Establishment of M. E. W. A. Bureau of Interchange of Jobbers' Experiences on Lines Handled for use by members.

9. General Monthly Bulletin serving the two-fold purpose of supplying members with valuable information and of bringing about unified jobber opinion on matters of trade interest.

10. General and special surveys on various phases of management in the wholesale automotive field, e. g., methods of compensating salesmen, budgetary

control, operation of branch establishments, machine shop operations, increasing the unit of sales, etc.

11. Merchandise Exchange Department, facilitating the sale of slow-moving items, overstocks and discontinued lines.

12. M. E. W. A. Purchasing Information Questionnaire, a first-rate device to assist jobbers to obtain accurate data, the first essential to efficient buying upon which depends profitable selling.

13. M. E. W. A. Collection Service which puts the prestige of the National Association back of the jobbers' efforts to collect past due accounts.

14. M. E. W. A. Adjustment Service through which matters in dispute between jobbers and manufacturers and others are successfully handled.

Point 3. "Contacts with manufacturers distributing through jobbers to interpret to them jobber opinion on sales policies and practices."

(*a*) M. E. W. A. General Bulletin dated June 27, 1932, is in part as follows:

HIGH SPOTS OF M. E. W. A.
CONFERENCE OF REGIONAL
ASSOCIATION REPRESENTATIVES
ETC.

It is the sense of this meeting that automotive jobbers will best serve their interests by handling lines of equipment sold solely through regular jobbing channels for distribution.

(*b*) The following quotation is taken from "The Tall Timbers," an address by General Manager Ruark:

Sometimes the M. E. W. A. has found it necessary in the interest of clean merchandising to be vigorous in its representations to a certain type of manufacturer and jobber, whose operations are destructive to jobber distribution, and at times we are compelled in justice to our jobbers, as well as to the manufacturers involved, to take advantage of all proper means at our disposal to protect the investments of our members.

The following appears in M. E. W. A. General Bulletin dated September 13, 1932:

Association officials are continuously contacting manufacturers endeavoring to interpret to them jobber opinions as manifested through the M. E. W. A. on various matters of importance to jobbers.

(*c*) On March 19, 1932, General Manager Ruark distributed to the directors a tentative program for the Board of Directors' meeting for March 28, 1932, which, among other things, included the following matters which were referred to the General Manager by regional groups and members:

8. (a) Reported Policy of Buick Motor Co. to insist that certain merchandise be bought only from Buick distributors.

(b) Dupont Policy of Selling direct to Certain Types of Dealers.

(c) New Trico Products Plan of Distribution.

(d) Reported change in Policy of Russell Mfg. Co.

(e) Ford Motor Co. competition principally on lamps and spark plugs.

(f) International Harvester Plan of handling equipment orders.

(g) Champion Spark Plug Co. distribution through Atlas, Goodyear, et al.

(h) Wayne Company distribution through oil companies.

(i) Weaver Mfg. Co. distribution through Goodyear Tire & Rubber Co. at reported discount of 35% off list.

(l) Great Lakes resolution re: Mail Order Houses selling below Manufacturers suggested resale.

(n) Texas and Southwestern Jobbers discussion on "New Departure Discounts."

(o) Different discounts for various trade classifications among dealers creates expense for jobbers.

9. (a) Letter from Chanslor & Lyon regarding manufacturers permitting car manufacturers to undersell the jobber.

(d) Continental Resource Corporation.

(f) List of Greenfield Tap & Dye Products in Mail Order Catalogues.

(h) Apparent preferentials given by Delco, Lyon Metal Products and New Departure Bearings, et al., to Chevrolet.

The minutes of the directors' meeting for March 28, 1932, indicate consideration of only items (*c*) and (*l*) above.

Point 4. "Maintain at high efficiency operations of the regional groups, the working units of the national body."

(*a*) The following quotation is taken from "The Tall Timbers":

> The regional groups are effective instruments in cementing the interests of jobbers in local and regional areas, and they are accomplishing some very worthwhile results. They serve as organized units available for cooperation with manufacturers and with the national body.

Point 6. "M. E. W. A. distribution charts for regional groups, through which jobbers may know who else is handling the line."

This distribution chart was a chart ruled into squares on which the names of manufacturers were shown on the horizontal lines and the names of jobbers in the vertical columns. An "X" inserted in a square on the chart indicated that the jobber shown in that vertical column was a distributor of the products of the manufacturer shown on the horizontal line. The "X's" appearing in the column of any particular jobber indicated the manufacturers for whom he distributed. The "X's" appearing on the horizontal line opposite a manufacturer's name indicated the jobbers who were distributing his products.

(*a*) The following is taken from "The Tall Timbers" (the M. E. W. A. 14-point program and address by General Manager B. W. Ruark):

As indicated, these Charts tell "who else is handling the line." They are used by jobbers in the following ways:

(a) If a jobber is giving consideration to a new line, he can by reference to the Chart find out those in his particular regional group who are handling the line and he may, if he wishes, call upon them to ascertain their experience with the line under consideration.

(b) If a jobber has an overstock of a certain line, he may offer said overstock to those carrying that line as shown by the Distribution Chart.

(c) A jobber may, through exchange of certain items in a line, balance his stock and at the same time assist a fellow jobber in doing the same.

(d) If a jobber is having difficulty in profitably merchandising a line, he may, if he wishes by reference to the Chart, inquire of fellow jobbers if they are facing or have faced a similar situation and how they may have met the difficulty.

This Distribution Chart Service is a device for developing facts as indicated in the uses to which they are put by jobbers. We believe—and we are backed in that belief by the judgment of some leading manufacturers—that this activity is a thoroughly proper one and that it has elements of real value for manufacturers. It enables jobbers to get facts about various lines in which they may be interested. Any manufacturer whose program is sound and whose line is profitable must of necessity be benefited by the interchange of information resulting from use of the Charts. Those whose programs are not sound and whose lines are not profitable are already headed into a blind alley, regardless of what facts may be developed or the method of their development.

The last issue of the Distribution Chart was issued in 1936.

(*b*) General Manager Ruark, in a bulletin dated May 27, 1932, entitled "M. E. W. A. Regional Group Keyline Distribution Charts," stated in part as follows:

It is planned to supply all M. E. W. A. members and those nonmember jobbers cooperating with us in regional groups a copy of the chart for every regional group. In that way a pretty accurate picture of distribution of various lines on a national scale can be had.

There will be need for weeding out some lines appearing on the chart and the addition of others not now on it. Some way will be developed to distinguish between lines of various manufacturers' make. Quite probably other refinements not now occurring to us will be necessary.

(*c*) In another bulletin in March, 1932, to members, General Manager Ruark stated in part as follows:

* * * He (the jobber) will be able, by reference to these several charts to ascertain what jobbers affiliated with the regional groups and the national organization throughout the country are handling a given line.

Point 8. "M. E. W. A. bureau of interchange of jobbers' experiences on lines handled for use by members."

(*a*) Approximately 90 percent of the members of M. E. W. A. took this service. Those taking the service agreed to furnish information, when requested from time to time, on any and all manufacturers with whom the members have had any experience and consent that

the information so furnished shall be used in the compilation of reports to be supplied members of the Association. All reports furnished to members taking the service were to be strictly confidential and if a member did not hold in confidence any such reports, no further reports were to be furnished him. The reports bore the following legend—"Only those members who apply for this service on the printed application form are entitled to the service."

(*d*) The following is taken from M. E. W. A. General Bulletin No. 8, December 13, 1932:

APPROVAL OF 14-POINT PROGRAM

One high-light in the Convention was the unanimous approval by Jobbers of the M. E. W. A. 14-POINT PROGRAM, particularly the "GOLD STAR POINT" of that program.

This "Gold Star Point"—or "The Interchange of Jobbers' Experiences on Lines Handled" was stated by many of our manufacturing friends to be very definitely in the interest of the manufacturer, as well as the jobber.

This service will be developed to the greatest point of efficiency as soon as it possibly can be, and we hope within a short while to have our files complete so that members may obtain on short notice reports of experiences of jobbers on any and all lines of automotive merchandise. * * *

Point 12. "M. E. W. A. purchasing information questionnaire. A first rate device to assist jobbers to certain accurate data, the first essential to efficient buying upon which depends profitable selling."

(*a*) The following is taken from "The Tall Timbers":

The jobber has a right to know what his competition is.

Third. Sales, and on what price basis, to channels competing with jobbers, such as chain stores, mail order houses, department stores, oil companies, tire companies, car manufacturers or distributors for resales, etc.

Since the price at which the manufacturer supplies merchandise to channels competing with jobbers is a most important factor determining the nature of the competition which these channels may give the jobber, it seems to us that there is no really good reason for withholding this information.

(*b*) The form of questionnaire under this point was sold to members at a nominal cost to those requesting same and were used by the jobber members and submitted to factory salesmen.

PAR. 9. The board of directors directed the general manager to issue a questionnaire to members on the subject "Should jobbers patronize Competing Manufacturers."

In the bulletin dated September 13, 1932, distributed to members, the general manager (Ruark) stated:

In our general letter eliciting opinions of members on this subject, we stated "uncontrolled outlets are taken to mean any and all channels of distribution competing with jobbers who either have a resale schedule lower than the resale

suggested for jobbers, or who handle manufacturers lines without regard to their suggested resales."

The inquiry was directed to 211 jobbers resulting in 142 responses.

The returns indicate an almost universal consensus of opinion that jobbers are not serving their own best interest by patronizing competing manufacturers whether such competition is direct through sales through their own outlets to jobber customers, or whether through other channels of distribution who are granted preferential treatment or are allowed to operate without regard to the manufacturer's suggested resale.

There is in all the responses not one single expression in support of the manufacturer who contributes to the breaking down of his own policies—that is, those suggested by him for the jobbing industry. There is, however, discernible in all the replies the general opinion that jobbers should either not patronize the manufacturer who competes with them, or in cases where it does not seem advisable to put that practice in effect, to buy as little as possible from such competing manufacturer.

Extracts from several of the members' answers were sent out in bulletin form to members by the general secretary, one of which is as follows:

(4) Jobbers should not patronize manufacturers with a sales policy that is discriminating in any way, shape or form, and such manufacturers should have that practice published in the M. E. W. A. bulletins.

One of the subjects discussed at the M. E. W. A. summer conference of the jobbers held in Chicago June 20–24, 1932, was "Should Jobbers Buy From Competing Manufacturers—Result of M. E. W. A. Questionnaire Covering this Subject and an Analysis of Forms which Said Competition Assumes."

PAR. 10. (*a*) National Automotive Parts Association (N. A. P. A.) was incorporated under the laws of Michigan, May 4, 1925. The Association had 38 main affiliated warehouses. These warehouses were all independently owned, and many of them had one or more branches. The Association had connection with 21 manufacturers. These manufacturers for the most part distributed 100 percent through the N. A. P. A. warehouses.

(*b*) Nearly all manufacturers have some kind of warehouse connections in various parts of the country. Usually, these warehouses are under the 100 percent control of the factory. The man in charge of the warehouse usually works on a commission. The maximum compensation paid to the warehouse agent is 20 percent. There is evidence that the minimum commission is 5 percent. However, in the case of the minimum commission the warehouse agent usually carries no stock in the warehouse and is no more than a factory representative taking orders.

(*c*) The warehouses of the N. A. P. A. organization function both as a warehouse and as a jobbing house. The warehouses receive an extra commission over and above usual jobber's commission as compensation for the warehouse facilities furnished.

(*d*) There is evidence that the N. A. P. A. warehouses were originally organized by the Continental Motors Corporation as supply depots for motor parts. Additional lines were added from time to time until the warehouse now carries a complete line of replacement parts and some accessory items.

(*e*) Some of the manufacturers affiliated with this group are members of the M. E. M. A.

(*f*) Some M. E. W. A. members objected to the system of distribution of N. A. P. A. One objection was that where an extra commission was granted to a jobber for warehousing, it was contended by some M. E. W. A. members that this extra commission was in fact a discrimination in price in favor of N. A. P. A. warehouse jobbers. Another objection by some of them was that N. A. P. A. warehouse jobbers sold at jobber prices to persons whom some M. E. W. A. jobbers claimed were not performing a jobbing function. Some of the members of the M. E. W. A. have sometimes written to their officials relative to the conduct of the N. A. P. A. distributors.

(*g*) E. Englehardt, a member of the Policy Committee of M. E. W. A. in a letter dated June 12, 1932, wrote to the Continental Diamond Fibre Co., in part, as follows:

> Replying to your circular letter of the 15th inst., one of the reasons the old line jobber does not take kindly to your product, is the fact that you give N. A. P. A. a preferential of 20% or 25%.
>
> This enables these people to go out and sell the little fellow and create a lot of competition in a field that is already too crowded, and we all agree that it is a situation that should not exist, and any honest-to-goodness jobber is foolish to buy your product thru your N. A. P. A. set-up, thus creating an additional profit for somebody that is entirely unnecessary.
>
> Quite a number of manufacturers have discontinued this and are passing the full price on to old line jobbers who are able to give them satisfactory distribution.

(*h*) Under date of August 4, 1932, Mr. Englehardt wrote the M. E. W. A. as follows:

> I was able today to obtain a list of names of concerns that are being set up as competition to us throughout the country because of price preference given by certain manufacturers to N. A. P. A. warehouses.
>
> In this particular instance it covers Cable only, and I think the offender is the Beldon Company, manufacturers of Cables of all kinds.

The average jobber, such as ourselves, pays 60% off for Cable. Beldon gives the N. A. P. A. warehouse 60 & 20% and they in turn sell the little fellows that are listed as N. A. P. A. jobbers at 60% off, or our cost.

I think this should be brought to the attention of all of our members who are handling Beldon Cable. We certainly are entitled to 60 & 20% if the N. A. P. A. fellow is. At any rate, these people are demoralizing the whole jobbing industry by putting in jobbers' stock at jobbers' cost at every little crossroads.

We understand the Victor Gasket & Mfg. Co. have recently discontinued selling the concern at Des Moines. These people have a few lines on which they get a 20% preferential and we certainly ought to make a strong fight to have this sort of thing discontinued, and I think concerted effort on the part of our Association can accomplish this very thing.

(*i*) Mr. Englehardt, on June 25, 1932, in a letter for the attention of General Manager Ruark, stated:

A few days ago I sent you copy of letter that I had written to the Continental Diamond Fibre Company. I enclose herewith their reply.

I think we might be able to bring pressure enough to bear on these people to show them the unfairness of their selling an N. A. P. A. concern on a lower basis than they do us. At any rate, I think we ought to try to show our members the inconsistency of buying from an N. A. P. A. jobber. It certainly isn't good business for us to patronize a concern that is in direct competition with us, and whose one aim in life is to set up concerns who can take business away from us.

The reply of the Continental-Diamond Fibre Co., referred to in the foregoing letter is as follows:

Thank you very much for your letter of June 18th and your suggestion regarding our present distribution set-up.

We have found, however, that over the last three years the N. A. P. A. set-up which is based on the need of the replacement market for nearby warehouse service, has really been beneficial to the big jobber as well as the small jobber.

In your case, for example, you can purchase Celoran Timing Gears from our warehouse in Des Moines at the same discount for which you buy any other line direct from the factory or from some warehouse not nearly so conveniently located. This enables you to keep your own stock at a minimum and get a turn-over which will show you a desirable profit.

PAR. 11. General Manager Ruark, of the M. E. W. A., wrote a letter to the Alemite Co., under date of September 21, 1932, as follows:

Our member, the Sieg Company of Davenport, Iowa, has sent me copy of letter to Stewart-Warner Speedometer Corporation, regarding the Alemite Corporation of Iowa, going into competition with jobbers.

I attach copy of said letter so you may know the view point of our member at first hand. I have heard reports of two or three other instances in which alemite distributors are alleged to be preparing to compete with jobbers handling your line.

It is only natural that jobbers would prefer not to have competition from manufacturers whom they are doing business with. This has been manifested in a number of ways; and I am calling it to your attention as a matter of information.

You undoubtedly will want to analyze the probable results of the activities of any of your representatives as they may affect Alemite interests.

Will you please note particularly our member's comments on Mr. Clarke's alleged activities in disrupting the sales organization of our member.

This letter is written to you as a matter of information and with a desire to cooperate with you in any matters of mutual interest.

We like to be well informed on any and all matters pertaining to our members, which is the reason I am coming to headquarters, and meanwhile I thank you for any comments on the matter in hand.

Under date of September 22, 1932, Alemite Corporation replied as follows:

Acknowledging your letter of September 21, I might tell you that just yesterday we heard of the rumors that are circulating about our Davenport distributor going into the parts jobbing business, and are writing Mr. Clarke today for a complete report as to just exactly what he is doing in this connection.

While we are inclined to believe that these rumors may not be entirely true or that they are at least greatly exaggerated, we are, nevertheless, getting to the bottom of this whole thing, and as soon as we have completed our investigation, I will be glad to write you again.

Mr. Engelhardt of the Sieg Co. of Davenport, was on two committees of the M. E. W. A. Mr. Wissler of Herring-Wissler Co., Des Moines, was on the Board of Directors of M. E. W. A.

Part III

PARAGRAPH 1. Respondent Automotive Trades Association of Greater Kansas City, hereinafter for convenience referred to as Automotive Trades Association, is an unincorporated trade association with headquarters and principal place of business formerly located at 206 East Sixteenth Street, Kansas City, Mo., and now located at 901 Davidson Building, 10 East Seventeenth Street, Kansas City, Mo. Its membership is composed of both manufacturers and jobbers of automobile parts and accessories. The following are the officers and directors of said respondent Automotive Trades Association for the years 1936 and 1940.

1936

Officers of association:	Name of member concern with which connected
George W. Arnold, president (deceased)	
Board of directors:	
Joe Myers	Pickwick Garage, 307 E. 9th, Kansas City, Mo.
Fred Lodde	Lodde Bros. Tire Service, 3756 Broadway, Kansas City, Mo.

Officers of association—Continued.

Geo. Lockridge	K. C. Auto Supply, 1818 McGee, Kansas City, Mo.
L. H. Courreger	24 Hour Service, 300 W. 20th, Kansas City, Mo.
A. H. Herzmark	Herzmark Auto Service, 3308 Troost, Kansas City, Mo.
Joe Butler	Federal Garage, 753 Central, Kansas City, Kans.
J. G. Craig	Craig Tire & Sales Co., 1837 Grand, Kansas City, Mo.
O. B. Gault	General Auto Parts Co., 1930 McGee, Kansas City, Mo.
Geo. Winters	Winters Service, 1233 Central, Kansas City, Kans.
V. E. Mott	Dayton Auto Parts Co., 1623 McGee, Kansas City, Mo.

Officers:

C. B. Berg, president	1025 Oak, Kansas City, Mo.
Edward T. Leahy, vice-president	1532 Baltimore, Kansas City, Mo.
Harry A. Rubin, vice-president	1025 Wyandotte St., Kansas City, Mo.
Joe Butler, vice-president	753 Central, Kansas City, Kans.
L. F. Naughton, vice-president	2103 Grand, Kansas City, Mo.
C. T. Falk, secretary	312 E. 17th, Kansas City, Mo.
O. V. Snook, treasurer	3014 Independence, Kansas City, Mo.
Robert Carr, sergeant-at-arms	1309 McGee, Kansas City, Mo.

Directors:

J. E. Barr	1931 McGee, Kansas City, Mo.
James Burleson	2744 Prospect, Kansas City, Mo.
Arthur H. Herzmark	3308 Troost, Kansas City, Mo.
Joe F. Myers	307 East 9th St., Kansas City, Mo.
L. L. Morgan	2012 Grand, Kansas City, Mo.

PAR. 2. The members of respondent association consist of several corporations, individuals, firms, and partnerships, their number and identity varying from time to time by the separation of some and the addition of others, so that it is impracticable at any given time to name each and all the members without manifest delay and inconvenience. The officers, directors, and members set forth and identified in the foregoing paragraphs are representative of all the members of the respective respondent associations. In many instances the members maintain membership in more than one of the respondent associations.

PAR. 3. The manufacturing members of said respondent association in the course and conduct of their business, make and sell various automobile parts and items of equipment in various States, and cause such parts and items of equipment to be shipped and transported to warehouses and places of business and to customers, includ-

ing jobber members, in States other than the State where such commodities were made or originally sold by respondent manufacturing members. The jobber members of said respondent association purchase various automobile parts and items of equipment in various States from manufacturers, including respondent manufacturing members and the automobile parts and items of equipment, so purchased, are shipped and transported to warehouses and places of business in States other than the States where such commodities were manufactured. In the course and conduct of such business, respondent manufacturing members and certain respondent jobbing members are, and have been, engaged in commerce among the several States of the United States and in the course of business in such commerce, their respective operations have a direct effect upon interstate commerce in automobile parts and items of equipment. In the course of such business operations, certain manufacturing members are normally in actual competition with each other and with nonmember manufacturers and certain jobbing members are normally in actual competition with each other and with nonmember jobbers.

PAR. 4. The business of the members of said respondent association has represented, and now represents a substantial volume of business in the manufacture and jobbing of various automobile parts and items of equipment.

PAR. 5. The respondent, Automotive Trades Association, was originally an organization of independent garages, not authorized car distributors. Later the said Association membership broadened to include all firms engaged in the automotive trades, which included the automotive jobbers. The said Association had a Jobbers' Division and a Manufacturers' and Miscellaneous Wholesalers' Division. The Manufacturers' Division does not now actively function. At the present time the Association has 12 manufacturing members who are classified as Associate members. The manufacturing members do not have a voice in the affairs of the Association. A list of services performed by the A. T. A. (Automotive Trades Association) contained the following:

7. Furnish simplified localized flat rate service.

12. Give you a wealth of valuable information on all departments of your business—this through regular and special meetings.

16. Do everything possible to improve trade practices and stabilize your business.

19. Identify you as a member of an established and progressive trade association.

PAR. 6. The respondent Association has facilities for time payment of automobile repairs, credit information, collection facilities. Secretary Barnett claimed that minutes of the meetings and special sessions are not kept. Under the provision of point 19 all members were furnished an identification card. The Association also published a directory or buying guide. The A. T. A. directory, with its membership lists of its various divisions, was sent to all members with the following:

Your Board of Directors felt that your members should support members, insofar as possible by purchasing supplies from members only. If all members will cooperate in that respect, much can be accomplished toward increasing the strength of our organization.

It has always been the policy of most member wholesalers to give special attention and consideration to business from A. T. A. retail establishments.

PAR. 7. The respondent Association has a jobbers' division and formerly had a warehouse division. After the organization meeting of the warehouse division, Mr. Mott of Dayton Auto Parts, spoke for the jobbers, December 13, 1930. Mr. Orville Gault, who originally organized the A. T. A., subsequently was taken to Detroit and employed by N. S. P. A. Some time after the meeting above referred to, Mr. Mott referred the matter of the Arrowhead Co., a manufacturer, selling to a machine shop in Kansas City at jobber's prices, to the Grievance Committee of the N. S. P. A. The warehouse Code of Ethics of the A. T. A. was as follows:

1. Warehouses will sell to jobbers who are selling at wholesale and are stocking a line.
2. No merchandise will be delivered from warehouse without written order from a jobber stocking the line or a competitive line.
3. All merchandise delivered from warehouse on jobber bona fide order must be billed from factory and not the warehouse.
4. No deliveries will be made to any jobber not stocking the line for which order is made, or a competitive line, unless on order of jobber stocking the line.

PAR. 8. The warehouse division of the A. T. A. cooperated with the respondent, Southwestern Jobbers Association and its jobbers outside of Kansas City, for the purpose of recognizing only legitimate jobbers as "distribution channels."

PAR. 9. Respondent, Automotive Trades Association and respondent Southwestern Jobbers Association were active in their opposition to F. T. Reuter of Chillicothe, Mo., being established as a jobber in Chillicothe, Mo. F. T. Reuter had been for several years established as a manufacturer's agent in Kansas City, Mo. In 1932 he began the

establishment of a jobbing business in Chillicothe, Mo., intending to retire gradually from his business as a manufacturer's agent. The two said respondent associations, through their officers and representatives, complained to several manufacturers because of sales being made to Reuter at jobbers' prices. As a result of this opposition to Reuter being established as a jobber, he was unable to procure from several manufacturers located in several States the requirements for the jobbing business at jobbers' prices. The said respondent associations organized similar opposition to the Brown Machine Works, Kansas City, Mo., engaging in jobbing business, as a result of which opposition said Brown Company was unable to obtain in interstate commerce its requirements for a jobbing business.

Part IV

PARAGRAPH 1. Respondent, Mississippi Valley Automotive Association, referred to in the complaint as Mississippi Valley Automotive Jobbers Association, was an unincorporated voluntary association of jobbers located and doing business in the State of Iowa and the western portion of the State of Illinois. Its members purchased various automobile parts and items of equipment in several States from manufacturers and sold, shipped, and transported them to buyers in States other than the States where such commodities were manufactured. In the course and conduct of such business such members were engaged in commerce among the several States of the United States, and in the course of such business in such commerce their operations had a direct effect upon interstate commerce and were thereby in competition with each other and with nonmember jobbers.

Said respondent has not held any meeting or engaged in any activity since March 1936.

W. E. Wissler of Wissler Co., Des Moines, Iowa, and L. E. Graham of G. Seltzer Co., Inc., Peoria, Ill., were formerly the president and secretary, respectively, of said respondent but were succeeded by G. J. Timmerman of Midwest Timmerman Co., Dubuque, Iowa, and E. J. McKee of Sieg Co., Davenport, Iowa, as president and secretary, respectively, in 1935. Said Timmerman and McKee were the last elected officials of said respondent.

PAR. 2. On September 17, 1932, L. S. Graham, as secretary of said respondent association, wrote to The Stewart-Warner Speedometer Corporation as follows:

At a meeting of the Mississippi Valley Automotive Association, composed of thirty of the legitimate automotive jobbers throughout the States of Iowa

and Illinois, held at Davenport on last Wednesday, the statement was made by one of the members that a B. F. Clark is figuring on going into the parts business in Davenport and that it is his idea to establish parts branches throughout the State.

In view of your connection with Mr. Clark, I was requested to write you a letter stating that it is the consensus of opinion of this group that it is not to the best interests of the wholesaler to patronize any manufacturer who is directly or indirectly interested in the jobbing business. We believe that such a move on your part might tend to affect your business nationally, as Mr. Clark's connection with you would be bound to become known.

I am simply communicating this thought to you, in order that you might know the general feeling of automotive jobbers at the present time with reference to manufacture competition directly or indirectly.

Furthermore, we believe that the present is a very inopportune time for any one to attempt to engage in this sort of business, as there is not sufficient business to be had to pay the expenses of those now engaged in it. I will be pleased to receive an expression from you, at your convenience, on this matter.

PAR. 3. On September 23, 1932, F. A. Hiter, on behalf of Alemite Corporation, wrote to L. E. Graham, Mississippi Valley Automotive Association, as follows:

Referring to your letter of September 17th, addressed to the Stewart-Warner Speedometer Corporation, which has been turned over to me for reply, I am inclined to believe that you have perhaps been misinformed as to Mr. Clarke, of the Alemite Company, of Davenport, activities in the parts business. Nevertheless, we are glad you brought it to our attention and will make a very thorough investigation to determine what truth there is to the story you have heard.

I can appreciate the viewpoint of your association in passing a resolution to the effect that it would not be to the best interest of wholesalers to patronize any manufacturer who is interested in the jobbing business, and from a selfish standpoint realize that Mr. Clarke going into the parts business in his territory might not be to our advantage.

As we have already said, however, we will immediately investigate this matter and as soon as we have a report on it will be glad to write you again.

PAR. 4. On September 17, 1932, C. J. Shaw, on behalf of Barrett Hardware Co., then a member of said respondent association, wrote Stewart-Warner Corporation, as follows:

While in Davenport the other day I heard a rumor that Mr. B. F. Clarke, of the Alemite Company, expected to go into the parts business in Davenport in the immediate future, and he expected to get branches started throughout the State.

As I am somewhat familiar with the jobber setup in Iowa, and being mindful of the fact that the M. E. W. A. have recently passed a resolution stating that it is not to the best interest of the wholesalers to patronize any manufacturer who is directly or indirectly interested in the jobbing business, I should like to call your attention to the fact that distribution nationally may be affected by such a move on the part of the Alemite Company.

I simply bring this matter to your attention for what it is worth, as I feel that the automotive equipment business is at the present time very well represented in the Middle West, and if anything, there is too much overlapping of territories for the best interest of all concerned.

PAR. 5. On September 22, 1932, Mr. F. A. Hiter, on behalf of Alemite Corporation, wrote to Mr. C. J. Shaw of Barrett Hardware Co. of Joliet, as follows:

Referring to your letter of September 17th addressed to the Stewart-Warner Speedometer Corporation, which has been turned over to me for reply, I am inclined to believe that you have perhaps been misinformed as to Mr. Clarke, of the Alemite Company of Davenport, activities in the parts business. Nevertheless, we are glad you brought it to our attention and will make a very thorough investigation to determine what truth there is to the story you have heard.

I can appreciate the viewpoint of the M. E. W. A. in passing a resolution to the effect that it would not be to the best interest of wholesalers to patronize any manufacturer who is interested in the jobbing business, and from a selfish standpoint realize that Mr. Clarke going into the parts business in his territory might not be to our advantage.

As we have already said, however, we will immediately investigate this matter and as soon as we have a report on it will be glad to write you again.

PAR. 6. On September 20, 1932, Mr. R. R. Englehart, as manager of Sieg Co. of Davenport, Iowa, then a member of said respondent association and also a member of respondent Motor and Equipment Wholesalers Association, wrote to Stewart-Warner Speedometer Corporation, a copy of which communication was sent to General Manager Ruark of Motor and Equipment Wholesalers Association, as follows:

In this morning's mail, I received from the Alemite Corporation of Chicago what they term an important announcement, in which they announce the reduction of discount on Alemite fittings.

This brought to my mind the fact that the Alemite Corporation of Iowa, B. F. Clarke, proprietor, is going into the automotive jobbing business in Davenport and other points in Iowa, and while we recognize his right to engage in business anywhere at any time, we also recognize the fact that any man who puts money in the jobbing business at this time, is either over-enthusiastic or not posted on conditions. All of us are losing plenty of money—Davenport and the Tri-Cities are especially over jobbered in our line, besides I think that a move of this sort by any of your representatives is bound to effect you nationally, as this no doubt will be made a national issue, and the average jobber is going to be very careful about buying the product of a manufacturer who is directly or indirectly engaged in the jobbing business.

The above matters are incidental, but I do want to register a very serious complaint about this man Clark trying to disturb or disrupt conditions—he is making overtures to our salesmen offering them more money than we pay them. We had the matter quieted down and last night he telephoned one of our boys

advising him that he just must have his services, and has an appointment with this man tonight. We have no fear that he is going to get this salesman, but I think you will agree that this is not a nice thing for any man to do. I talked to Clark's manager about it and he advised me that they were not doing anything of the sort, but in the face of this statement, they go ahead and do it anyhow.

It would seem to me that you could save Clark a lot of money by keeping him out of this venture and at the same time maintain your good standing with the jobbing trade throughout the country.

I will be very pleased to hear from you and with kind regards, beg to remain.

PAR. 7. On Sepember 24, 1932, Mr. R. R. Englehart of Sieg Co., aforesaid wrote to Alemite Corporation, as follows:

Replying to yours of the 23rd inst., beg to say that there is no question about Mr. Clarke being the principal behind the concern that expects to go into the Parts business here in Davenport.

The first information that came to us was that the Iowa Auto Market had sent out letters to manufacturers advising they were opening up a parts branch in Davenport. At the same time, it was rumored that Clarke was the man behind the gun.

A manufacturer's salesman telephoned the Iowa Auto Market from my office asking what their connection with this move was, and they flatly denied any responsibility—that they had written these letters to manufacturers with a view of helping Clarke get lines that he could not get on his own account. They stated they were in no way interested, that Clarke was the sole proprietor.

I then telephoned Clarke at Des Moines and told him that I understood he was going into the parts business in Davenport and he assured me that he was and I asked him if he would come into my office and talk matters over with me as I had some ideas that might be of benefit to both of us. He agreed to come in the following Friday. However, on Friday morning I received a telephone call from a man by the name of Bohn who said that Mr. Clarke was unable to get here and had authorized him to come up and talk in his stead, and in a few minutes he came into my office and we talked the matter over at some length and he stated that he was going to manage the business for Clarke, and that Clarke was the sole proprietor and owner of the business.

A few days later I learned that there had been some misunderstanding between Clarke and the Iowa Auto Market and that he (Clarke) was now depending on Standard Motor Parts Company, which is a N. A. P. A. connection, for help in getting the lines that he felt were necessary. It was then reported that the Standard Motor Parts Company had taken the matter over and were going to operate the branch here.

I again talked the matter over with Bohn and he assured me that the Standard Motor Parts Company had nothing to do with it, except as a source of supply for Clarke.

It is my opinion that if you raise serious objection with Clarke about this, he is going to tell you that Standard Motor Parts Company are the people who are running this business, but the fact remains that it is Clarke, or if Clarke has had to get out of it, he is responsible for this condition in Davenport, and every jobber in this country knows it, and we think it is a bad move on the

part of Clarke and that if it is allowed to go through, it is going to create a bad impression.

You can depend on the information I have given you as being absolutely accurate, and I don't believe that Clarke would attempt to dispute it.

P. S.—In my conversation with Bohn, I explained to him that I thought the reaction against the Alemite Corporation would be bad, that jobbers were discussing Clarke's moves and had the impression that he expected to put in other branches through this part of the country. This seemed to bother Bohn somewhat.

PAR. 8. On September 26, 1932, H. E. Wissler, as vice president of Herring-Wissler Co., then a member of respondent association, wrote to Alemite Corporation, as follows:

Our attention has been directed to the fact that Mr. B. F. Clarke, of your Des Moines office, is opening a parts jobbing business in the city of Davenport.

No one can deny the right of any individual or firm to go into business when, as and if they so desire, but the members of our jobbers' association do not feel that the manufacturers whom we support should become competitors of ours. Therefore, if the Alemite Corporation has any part or interest in the Davenport venture, we want to lodge a very serious protest against it and to express the thought that your company cannot well hope to secure the support of our members if you insist on becoming one of their competitors.

PAR. 9. On October 20, 1932, Alemite Corporation wrote to Mr. W. E. Wissler, aforesaid, as follows:

We did not acknowledge your letter of September 26 when it was received, because we were at that time in the midst of investigating the report that Mr. Clarke was contemplating going into the parts jobbing business in the city of Davenport.

Since then, our Mr. Dalrymple and Mr. Clarke called on you; and you, of course, know that Mr. Clarke has decided not to go into the parts jobbing business.

PAR. 10. On October 20, 1932, Alemite Corporation wrote to F. J. Tenk of Tenk Hardware Co. of Quincy, Ill., then a member of the respondent association, as follows:

Your letter of September 23, addressed to the Stewart-Warner Speedometer Corporation, was referred to me; but I did not reply to it immediately because of the fact that at that time we were in the midst of investigating the report that Mr. Clarke was contemplating going into the parts jobbing business, at Davenport, Iowa.

Our investigation did reveal that Mr. Clarke had thought about going into the parts jobbing business; but we have prevailed upon him to refrain from doing so.

PAR. 11. On May 20, 1932, Victor Manufacturing & Gasket Co. wrote to Sieg Co., aforesaid, as follows:

May we refer to your letter of May 19th pertaining to quotations being made by the Standard Motor Parts Company of Des Moines.

There is positively nothing to the statement attributed to them to the effect that they have a special inside discount which permits them to quote 60% off the list. We shall take this subject up right away to find out if such quotations are being made. If they are, it would be a loss equal to the amount of their cost of handling. I believe there are two or three lines that the N. A. P. A. organization has on an exclusive basis with special discounts, and if there is anything at all to the report I would imagine that it applies to one of their controlled lines.

As we see it, your letter indicates what probably would happen if we extended special discounts to certain companies based on volume, or for other reasons. Possibly a company like yours would refrain from passing on a special discount, but I think you would be the exception rather than the rule.

We will let you hear from us as soon as we can run down this report.

P. S.—Mr. Beach will not be in Des Moines until the latter part of next month. We propose to inquire about this by correspondence pending the time Mr. Beach can make an investigation. If you have any reason to feel that taking this up by correspondence might not be satisfactory, will you please advise by return mail. We will hold our letter for two days.

PAR. 12. On May 21, 1932, said Sieg Co. wrote Victor Manufacturing & Gasket Co., as follows:

Replying to yours of the 20th instant regarding the Des Moines matter, it is perfectly all right with us if you want to take this up by correspondence, however, we would ask that you do not mention our name. I have just finished a law suit, which shows me that anything can happen.

At the same time I do think it very, very necessary that this matter be straightened out so that the difficulty will not grow. When you are selling this class of people, you are sure very apt to create trouble for your good jobbing friends and yourselves.

Kind regards.

PAR. 13. On June 17, 1932, Sieg Co., aforesaid, wrote to Victor Manufacturing & Gasket Co., as follows:

We are quite concerned over the arrangement you have made with the Des Moines concern that we wrote you about sometime ago.

They, of course, spread the propaganda that they are getting a confidential price and for that reason are able to give an inside price, but that isn't all the harm that is being done—they are putting in stocks at every little town including your gaskets and other items, and you can see what is happening to the honest-to-goodness jobber.

My opinion is, that they are going to do you, as well as us, a lot of damage. You have a perfect right to sell them, but we are rather of the opinion that we do not want to handle the line if they are permitted to do as they have been doing. We believe it would be better for us to not handle lines that carry that sort of competition.

The writer will be in Chicago on Tuesday at the Edgewater Beach Hotel, and will be glad to talk to some one in authority, either Mr. Secrist or Mr. Victor—this is quite important to both of us, and I suggest that you be prepared to give us a definite answer.

The Victor Manufacturing & Gasket Co. notified Standard Motor Parts Co. on June 29, 1932, as follows:

Effective July 15, 1932, we wish to discontinue quotations to your company at prices in our wholesalers Price List.

Part V

PARAGRAPH 1. Respondent, Southwestern Automotive Jobbers Association, referred to in the complaint as Southwestern Jobbers Association, was organized in October 1926. The said respondent association is a nonprofit voluntary unincorporated association of from 17 to 23 jobbers of automotive parts and accessories operating in Missouri, Kansas, Arkansas, and Oklahoma, or in one or more of said States. Meetings of Southwestern Automotive Jobbers Association were from time to time addressed by the general manager of the Motor and Equipment Wholesalers Association on subjects pertaining to jobbing policies. The respondent association was frequently furnished with bulletins by the said Motor and Equipment Wholesalers Association. Some of the member concerns of respondent Southwestern Association are members of the respondent Motor and Equipment Wholesalers Association. The Southwestern Automotive Jobbers Association meets three times a year. It has a confidential credit exchange for its members and furnishes its membership with a memoranda of merchandise which any of its members desire to discontinue.

The officers of said respondent, Southwestern Automotive Jobbers Association, as of 1936, and the member business concerns with which they are connected are, or have been, as follows:

Officers:	Name of member concern with which connected
L. E. Allman, president	Ozark Motor & Supply Co., Springfield, Mo.
W. A. Dycke, secretary	Herman-Brownlow Co., Springfield, Mo.

The officers of 1940 are as follows:

Claude L. Severin, president, 714 North Broadway, Oklahoma City, Okla.
Walter M. Padget, secretary, 1216 Filmore Street, Topeka, Kans.

PAR. 2. The members of respondent association consist of from 17 to 22 corporations, individuals, firms, and partnerships, their number and identity varying from time to time by the separation of some and the addition of others, so that it is impracticable at any given time to name each and all the members without manifest delay and inconvenience. The officers and members set forth and identified in the foregoing paragraph are representative of all the members of the respective respondent association.

PAR. 3. The members of said respondent association purchase various automobile parts and items of equipment in several States from manufacturers, and the automobile parts and items of equipment so purchased are shipped and transported to warehouses and places of business in States other than the States where such commodities were manufactured. In the course and conduct of such business the members are, and have been, engaged in commerce among the several States of the United States. The said members are in actual competition with each other and with nonmember jobbers.

PAR. 4. There are and have been for the last 9 years approximately 266 jobbers of automotive and replacement parts in the States of Oklahoma, Arkansas, Kansas, and Missouri (see Irving-Cloud list for 1939–40), of which about 17 belong to Southwestern Automotive Jobbers. The number has varied only slightly. On March 13, 1939, there were 23 members. Some members of the Southwestern Jobbers Association adopted and maintained a policy of recognizing only so-called legitimate jobbers as desireable channels. This had the effect of causing some manufacturers located in States other than those in which such members were located to confine their sale of automobile parts and items of equipment to such jobbers as were recognized as legitimate within the territory in which such members did business.

PAR. 5. Some members of the Southwestern Jobbers Association and some members of the Automotive Trades Association of Greater Kansas City were active in their opposition to F. T. Reuter, of Chillicothe, Mo., in his endeavor to establish a jobbing business in Chillicothe, Mo., on the grounds that it was unfair to other jobbers to have a manufacturer's agent, receiving discounts as such, engaging in the jobbing business, as this would give him an undue advantage over those jobbers not carrying on such dual business. Said Reuter was for several years established as a manufacturer's agent in Kansas City, Mo. In 1932, Reuter intended gradually to retire from his business as a manufacturer's agent and to establish a jobbing business. The Reuter situation was discussed by some of the members attending the meeting of Southwestern Jobbers Association at Fort Smith, Ark., in October 1932. Some of the members of the respondent association complained to various manufacturers in several States relative to Reuter's desire to operate a jobbing establishment, because at the same time Reuter was receiving discounts or commissions as a manufacturer's agent, and on that account protested against manufacturers making sales of auto parts and equipment at jobber prices to the said Reuter for his jobbing business. Several complaints were made by

some of the members of respondent association to manufacturers whom Reuter represented, who either had sold to Reuter or were contemplating sales to Reuter. Clawson and Bals, Inc., of Chicago, Ill., which Reuter represented as a manufacturer's agent, at first favored Reuter's jobbing venture, and then after complaints from members of the Southwestern Jobbers Association, the company turned against it. Because of this activity several manufacturers whom Reuter represented as a manufacturer's agent in Kansas City, refused to sell him merchandise for the store in Chillicothe. The following communication was received by F. T. Reuter of Chillicothe, Mo., from G. E. Spencer, sales manager of the Joplin Supply Co.:

While attending the Southwestern Jobbers Associational Meeting in Fort Smith, Arkansas, last week, we heard many stories of your recent actions and forecasts of your future actions. We would like to have from you promptly a letter outlining frankly what you expect to do in the future and how this will affect the Clawson and Bals line.

PAR. 6. F. T. Reuter, in a communication to G. E. Spencer of the Joplin Supply Co., Joplin, Mo., a member of the respondent association, stated that in the near future his sales agency would have no connection with the jobbing business.

PAR. 7. F. T. Reuter contacted several manufacturers for the purpose of obtaining catalogs, prices, and sales information in reference to his jobber business. Some replies Reuter received are as follows:

JULY 21, 1932.

Attention: F. T. Reuter

F. T. REUTER CO., INC.,
211 E. 14th Street, Kansas City, Mo.

DEAR MR. REUTER: We are in receipt of your favor of the 16th inst., and note with interest that you are planning to job automobile parts. As you know we have established a very strict jobbing policy and last fall we joined the N. S. P. A. and for some years we have been members of the M. E. A. It would seem that this would not work in with your plan, especially so since from all indications you are planning to continue to represent the firms listed on your letterhead.

It would seem to the writer at first glance that the jobbing trade will not approve your policy and if they do not both you and ourselves would be embarrassed if we filled your orders.

I would suggest that you make a very careful canvass with some of the outstanding jobbers of your locality and then advise us if you plan to proceed and on what basis.

With kindest regards,
Sincerely,

THE SIMMONS MANUFACTURING COMPANY,
(S) C. F. GROTH, *President.*

C. F. Groth: K.

SEPTEMBER 7, 1932.

Subj: Chillicothe Auto Supply Co., Chillicothe, Ohio.

F. T. REUTER COMPANY, INC.,
211 E. Fourteenth St., Kansas City, Missouri.

GENTLEMEN: We appreciate your letter of the 3rd and your interest in the Simmons line. However, we have to advise that the distribution of our parts in your section of the country is being confined almost exclusively to members of the South-Western Jobbers Association.

Will you be kind enough to advise whether your organization is a member of this association.

Yours very truly,

THE SIMMONS MANUFACTURING COMPANY,
(S) R. T. LECLERCQ, *Sales Department.*

R. T. Leclercq—J.

PAR. 8. J. A. Tumbler Laboratories, of Baltimore, Md., in a communication to Myers Motor Supply Co., Joplin, Mo., a member of the Southwestern Jobbers Association, with reference to a sale made to a competitor of the Myers Co. at Joplin, under date of July 8, 1932, stated in part as follows:

* * * With a view of carrying out what I understand to be unified action of jobbers throughout your territory in fearlessly and frankly withdrawing effort from those lines who are offering wholesale discounts indiscriminately. If this situation has caused Mr. Spencer's action that he genuinely wanted to sell a line with a policy like Tumbler, our refusal to sell him would be embarrassing indeed.

PAR. 9. The following resolutions were adopted by Southwestern Jobbers Association and sent to respondents Motor and Equipment Wholesalers Association and National Standard Parts Association:

RESOLUTION REGARDING THE BLACK & DECKER MFG. COMPANY'S TIME-PAYMENT SELLING PLAN

Passed by the Southwestern Jobbers
Association at its meeting in
Oklahoma City, Okla., October
19th and 20th, 1931

WHEREAS The Black and Decker Manufacturing Company has adopted a time-payment selling plan which is a radical change from the plan now being used by members of the Association;

AND WHEREAS The Black and Decker Company has broadcasted this plan to the jobbers as well as the dealers of the United States without even consulting any of the members of this Association;

AND WHEREAS we are of the opinion that only a few jobbers in the United States were consulted before this plan was arranged by the Black & Decker Company thereby showing a lack of cooperation on the part of the Black and Decker Manufacturing Company;

AND WHEREAS we are of the opinion that this plan is selfish and can be profitable only to the Black and Decker Manufacturing Company;

THEREFORE, BE IT RESOLVED that we greatly disapprove of this credit plan.

BE IT FURTHER RESOLVED that a copy of this resolution be supplied to the Motor and Equipment Wholesalers Association, the several regional jobbers associations and the Motor and Equipment Association and the National Standard Parts Association, so that they may be advised of the well-considered opinion of the Southwestern Jobbers Association.

FURTHER BE IT RESOLVED that copy of this resolution be sent to the Black and Decker Manufacturing Company.

RESOLUTION RE: MANUFACTURERS RETAINING WAREHOUSE STOCKS

Passed by the Southwestern Jobbers Association at its meeting in Oklahoma City, Okla., October 19th and 20th, 1931

WHEREAS it has become the practice of certain manufacturers to retain warehouse stocks in various cities, thereby taking over, or attempting to take over, some of the principal functions of the jobber;

AND WHEREAS, in our opinion said warehouse stocks place an unnecessary burden of expense upon the manufacturer, with no adequate return to him with detriment to the Automotive Jobbing business;

AND WHEREAS, the members of the Southwestern Jobbers Association at its meeting in October 19th and 20th, unanimously expressed their disapproval of said manufacturing warehouse stocks with their attendant trade abuses;

THEREFORE BE IT RESOLVED that manufacturers maintaining warehouse stocks be requested to discontinue same both as a matter of eliminating needless expense and of bringing about better conditions in the Automotive Jobbing Industry;

BE IT THEREFORE RESOLVED that a copy of this resolution be supplied to the Motor and Equipment Wholesalers Association; the several regional jobber associations, the Motor and Equipment Manufacturers Association and the National Standard Parts Association, with the request that they endeavor by lawful means to bring about the discontinuance of the practice.

RESOLUTION RE: "CONSIGNED MERCHANDISE"

Passed by the Southwestern Jobbers Association at its meeting in Oklahoma City, Okla., October 19th and 20th, 1931

WHEREAS it is the policy of certain manufacturers of automotive parts and supplies to consign their merchandise rather than sell it;

AND WHEREAS the members of this Association believe that such a policy causes many of these manufacturers to consign to jobbers, or alleged jobbers whose financial condition is not such that they could be sold on open account;

AND WHEREAS it is our opinion that such policy is detrimental to the best interest of our members;

NOW THEREFORE BE IT RESOLVED that it is the unanimous opinion of the members of the Southwestern Jobbers Association that we are opposed to the consignment of merchandise and that said manufacturers should sell their merchandise with a guarantee against obsolescence, rather than consign same.

BE IT FURTHER RESOLVED that a copy of this resolution be supplied to the Motor and Equipment Wholesalers Association, the several regional jobber associations, the Motor and Equipment Manufacturers Association, and the

National Standard Parts Association, with the request that they endeavor by lawful means to bring about the discontinuance of this practice.

CONCLUSION

Acts and practices of the respondent associations, to wit, National Standard Parts Association, Motor and Equipment Wholesalers Association, Automotive Trades Association of Greater Kansas City, Mississippi Valley Automotive Association, and Southwestern Automotive Jobbers Association, as disclosed herein are to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among the members of respondent National Standard Parts Association in the sale of automobile parts and accessories in commerce within the intent and meaning of the Federal Trade Commission Act; have tended to unreasonably restrain such commerce in automobile parts and accessories, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, National Standard Parts Association, Motor and Equipment Wholesalers Association (referred to in the complaint as Motor and Equipment Wholesale Association), Automotive Trades Association of Greater Kansas City, Mississippi Valley Automotive Association (referred to in the complaint as Mississippi Valley Automotive Jobbers Association), and Southwestern Automotive Jobbers Association (referred to in the complaint as Southwestern Jobbers Association), and stipulations as to the facts entered into between the respondents herein and W. T. Kelley, chief counsel for the Commission, which provides among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, National Standard Parts Association, acting through its officers, directors, and agents, in connection with the offering for sale, sale, and distribution of automobile parts and accessories in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Attempting, pursuant to agreement with its members, to eliminate price competition among and between manufacturers and jobbers of automobile parts and accessories; to prevent the establishment of new and additional competitors of jobber members of said respondent association; and to maintain retail prices suggested by the manufacturing members of said respondent association by—

(*a*) Causing said manufacturing members to agree among themselves as to the prices at which they would sell their respective products and the prices at which said products should be resold by jobbers; and

(*b*) Causing said manufacturing members to confine the sale of their respective products to those jobbers who are designated by the respondent Association as the only jobbers to be sold in their respective trade areas by the manufacturing members of said respondent Association because of their willingness to maintain the retail prices suggested by said manufacturing members of respondent Association.

2. Attempting, pursuant to agreement with its members, to prevent the establishment of new and additional competitors and to maintain retail prices suggested by said manufacturing members of said respondent association by causing its jobber members concertedly to refuse to buy automobile parts and accessories from those manufacturers who do not or will not refrain from selling their products to jobbers or other outlets not designated by the members of said respondent association.

3. Holding meetings of groups of jobber members of respondent Association and other automotive parts and accessory jobbers, at any place within the United States, for the purpose of threatening, influencing and coercing manufacturers of automotive parts and accessories to compel them to confine their sales of their respective products to those jobbers designated by the respondent Association as the only jobbers to be sold in their respective trade areas by the manufacturing members of respondent Association because of their willingness to maintain the retail prices suggested by the said manufacturers.

4. Holding meetings of groups of manufacturing members of said respondent Association and other manufacturers of automotive parts and accessories for the purpose of fixing prices at which said manufacturers would sell their respective comparable products and at which said products should be resold by jobbers to retail trade.

It is further ordered, That respondents, Motor and Equipment Wholesalers Association (referred to in the complaint as Motor and Equipment Wholesale Association), Mississippi Valley Automotive Association (referred to in the complaint as Mississippi Valley Auto-

motive Jobbers Association), and Southwestern Automotive Jobbers Association (referred to in the complaint as Southwestern Jobbers Association), acting through their officers, directors, and agents, in connection with the offering for sale, sale, and distribution of automobile parts and accessories in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Attempting, pursuant to agreement with their members, to prevent the establishment of new and additional competitors of their members in the sale of automobile parts and accessories at wholesale by—

(*a*) Causing their members concertedly to refuse to buy or threaten to refuse to buy automobile parts and accessories from those manufacturers who did not or would not refrain from selling their products to persons or corporations not designated by said respondents; and

(*b*) Exchanging information, through questionnaires and reports circulated by a secretary, general manager, or any other agent, as to sales policy of manufacturers and jobbers, for the purpose of assisting the members of respondent associations in their concerted refusal to buy automobile parts and accessories from manufacturers described in subparagraph (*a*) herein.

It is further ordered, That respondent, Automotive Trades Association of Greater Kansas City, acting through its officers, directors, and agents in connection with the offering for sale, sale, and distribution of automobile parts and accessories in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Attempting, pursuant to agreement with its members, to prevent the establishment of new and additional competitors of its members, in the sale of automobile parts and accessories at wholesale by—

(*a*) Causing its members concertedly to refuse to buy or threaten to refuse to buy automobile parts and accessories from those manufacturers who did not or would not refrain from selling their products to persons or corporations not designated by said respondent; and

(*b*) Exchanging information, through questionnaires and reports circulated by the secretary, or any other agent, as to the sales policy of manufacturers and jobbers, for the purpose of assisting the members of respondent association in their concerted refusal to buy automobile parts and accessories from manufacturers described in subparagraph (*a*) herein.

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

IN THE MATTER OF

H & D SALES COMPANY, AND NATHAN J. HUBBARD AND ARTHUR EASTON DAVIS

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

Docket 3956. Complaint, Nov. 22, 1939—Decision, Feb. 5, 1941

Where a corporation and two individuals, who were general officers, stockholders, and directors thereof and formed, controlled, and directed its practices and policies, engaged in competitive, interstate sale and distribution of knives, fountain pens, pen and pencil sets, cigarette lighters, flashlights, watches, and other articles of merchandise, and, as aforesaid engaged, in selling 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 including (1) as illustrative, various articles, together with punchboard, for use in sale or distribution of such articles, value of each of which was in excess of 2 cents, to consuming public under a plan in accordance with which, and said board's explanatory legend, customer or purchaser received, for 2 cents paid, and depending on success or failure in selecting certain lucky numbers, one of said articles, and purchaser who did not qualify by obtaining one of lucky numbers, received nothing for his money other than privilege of punching number from board, and (2) various other assortments, along with punchboards, involving lot or chance feature similar to that above described and varying therefrom in detail only; acting together and in cooperation with each other—

Sold said assortments, together with such punchboards, to wholesalers, to jobbers, and to retailers by whom, as direct or indirect purchasers thereof, said assortments were exposed and sold to purchasing public in accordance with sales plan aforesaid, involving game of chance or sale of a chance to procure one of said articles of merchandise at price much less than normal retail price thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of their merchandise in accordance with such sales plan, 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 said sales plan or method employed by them and by element of chance involved therein, and were thereby induced to buy and sell their said merchandise in preference to that offered and sold by their 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 unfairly diverting trade in commerce to them from their said competitors 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 in commerce and unfair and deceptive acts and practices therein.

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

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

Mr. William C. Burton, of Knoxville, Tenn., 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 H & D Sales Co., a corporation, and Nathan J. Hubbard and Arthur Easton Davis, individuals and officers and directors of H & D Sales 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, H & D Sales Co., is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 320 North Gay Street, Knoxville, Tenn. Respondent, Nathan J. Hubbard, an individual, is a stockholder, president, and director of the corporate respondent. Respondent, Arthur Easton Davis, an individual, is a stockholder, secretary and treasurer, and director of the corporate respondent. Respondents, Nathan J. Hubbard and Arthur Easton Davis, formulate, control, and direct the practices and policies of the corporate respondent. Both 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 knives, fountain pens, pen and pencil sets, cigarette lighters, flashlights, watches, 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 merchandise, when sold, to be transported from their place of business aforesaid to purchasers thereof, at their respective points of location, in the various States of the United States other than the State of Tennessee, and in the District of Columbia. 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 sell and have 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 respondents, and is as follows:

This assortment consists of various articles of merchandise, together with a device commonly called a punchboard. Said articles of merchandise are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 2 cents each, and when a punch is made from the board a number is disclosed. The numbers begin with 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 specified article of merchandise. A purchaser who does not qualify by obtaining one of the lucky numbers receives nothing for his money other than the privilege of punching a number from the board. The articles of merchandise are worth more than 2 cents each, and the purchaser who obtains one of the numbers calling for one of the articles of merchandise receives the same for the price of 2 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The said articles of merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

.Respondents sell and distribute, and have 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 respondents' said 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 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 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 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 method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents, who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia, to respondents from their said competitors who do not use the same or an equivalent method. 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 November 22, 1939, issued, and on November 23, 1939, served, its complaint in this proceeding upon the respondents, H & D Sales Co., a corporation, and Nathan J.

Hubbard and Arthur Easton Davis, individually and as officers of H & D Sales Co., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on 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, H & D Sales Co., is a corporation organized and existing under the laws of the State of Tennessee, with its principal office and place of business located at 320 North Gay Street, Knoxville, Tenn. Respondent, Nathan J. Hubbard, an individual, is a stockholder, president, and director of the corporate respondent. Respondent, Arthur Easton Davis, an individual, is a stockholder, secretary and treasurer, and director of the corporate respondent. Respondents, Nathan J. Hubbard and Arthur Easton Davis, formulate, control, and direct the practices and policies of the corporate respondent. Both 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 set forth.

Respondents are now and for some time last past have been engaged in the sale and distribution of knives, fountain pens, pen and pencil sets, cigarette lighters, flashlights, watches, 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 merchandise, when sold, to be transported from their place of business aforesaid to purchasers thereof, at their respective points of location, in the various States of the United States other than the State of Tennessee, and in the District of Columbia. 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 sell and have 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 respondents, and is as follows:

This assortment consists of various articles of merchandise, together with a device commonly called a punchboard. Said articles of merchandise are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 2 cents each, and when a punch is made from the board a number is disclosed. The numbers begin with 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 specified article of merchandise. A purchaser who does not qualify by obtaining one of the lucky numbers receives nothing for his money other than the privilege of punching a number from the board. The articles of merchandise are worth more than 2 cents each, and the purchaser who obtains one of the numbers calling for one of the articles of merchandise receives the same for the price of 2 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The said articles of merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondents sell and distribute, and have 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 respondents' said 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 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 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 or distribute merchandise in competition with the respondents, as above found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents, who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or an equivalent method.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of

respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, H & D Sales Co., a corporation, its officers, and Nathan J. Hubbard and Arthur Easton Davis, individually and as officers of said H & D Sales Co., respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of knives, fountain pens, pen and pencil sets, cigarette lighters, flashlights, watches, and 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 such 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 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

IMPERIAL KNIFE 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 4115. Complaint, Apr. 26, 1940—Decision, Feb. 5, 1941

Where a corporation engaged in manufacture of various articles of cutlery, including knife of certain general design and appearance, and in offer and interstate sale thereof—

Designated and marked as "Scout" knife its aforesaid product, 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," long understood as thus 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 so sponsored or approved, and with effect of causing substantial part of public to purchase its said knife because of such belief:

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

Mr. Joseph C. Fehr for the Commission.

Mr. Francis J. Fazzano, of Providence, R. I., 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 Imperial Knife 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, Imperial Knife Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the

State of Rhode Island, with its principal office and place of business located at 14 Blount Street, in the city of Providence, in the State of Rhode Island.

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 "Scout" knife. Respondent causes its said products, when sold, to be transported from its place of business in the State of Rhode Island to the purchasers thereof located in States of the United States other than the State of Rhode Island, 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 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 "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 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, 1940, issued and on April 29, 1940, served its complaint in this proceeding upon respondent, Imperial Knife Co., Inc., 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 prem-

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Imperial Knife Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 14 Blount Street, in the city of Providence, in the State of Rhode Island.

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 "Scout" knife. Respondent causes its said products, when sold, to be transported from its place of business in the State of Rhode Island to the purchasers thereof located in States of the United States other than the State of Rhode Island 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, as 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 "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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Imperial Knife 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 its knives in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "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

COLONIAL KNIFE 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 4116. Complaint, Apr. 26, 1940—Decision, Feb. 5, 1941

Where a corporation engaged in manufacture of various articles of cutlery, including knife of certain general design and appearance, and in offer and interstate sale thereof—

Designated and marked as "Scout" knife its aforesaid product, 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," long understood as thus 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 so sponsored or approved, and with effect of causing substantial part of public to purchase its said knife because of such belief:

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

Mr. Joseph C. Fehr for the Commission.

Mr. Francis J. Fazzano, of Providence, R. I., 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 Colonial Knife Company, 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, Colonial Knife Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 287 Oak Street, in the city of Providence, in the State of Rhode Island.

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 "Scout" knife. Respondent causes its said products, when sold, to be transported from its place of business in the State of Rhode Island to the purchasers thereof located in States of the United States other than the State of Rhode Island 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, 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 "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 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, 1940, issued and on April 29, 1940, served its complaint in this proceeding upon respondent, Colonial Knife Co., Inc., 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, Colonial Knife Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 287 Oak Street, in the city of Providence, in the State of Rhode Island.

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 "Scout" knife. Respondent causes its said products, when sold, to be transported from its place of business in the State of Rhode Island to the purchasers thereof located in States of the United States other than the State of Rhode Island 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, as 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 "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.

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 alle-

gations 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Colonial Knife 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 its knives in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "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

UTICA 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 4117. Complaint, Apr. 26, 1940—Decision, Feb. 5, 1941

Where a corporation engaged in manufacture of various articles of cutlery, including knife of certain general design and appearance, and in offer and interstate sale thereof—

Designated and marked as "Scout" knife its aforesaid product, 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," long understood as thus 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 so sponsored or approved, and with effect of causing substantial part of public to purchase its said knife because of such belief:

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

Mr. Joseph C. Fehr for the Commission.

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

PARAGRAPH 1. Respondent, Utica Cutlery Company, 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 in the city of Utica, in the State of New York.

PAR. 2. Respondent is now, and for more than one 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 "Scout" knife. Respondent causes its said products, when sold, to be transported 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. 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, 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 "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 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, 1940, issued and on April 29, 1940, served its complaint in this proceeding upon respondent, Utica Cutlery 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 Commision, 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 proceding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Utica Cutlery Co., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located in the city of Utica, in the State of New York.

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 "Scout" knife. Respondent causes its said products, when sold, to be transported 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. 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, as 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 "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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to 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 respondent, Utica 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 its knives in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "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

THE REVIGATOR CORPORATION, AND E. O. LOEBER, INDIVIDUALLY, AND AS PRESIDENT OF THE REVIGATOR CORPORATION

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

Docket 4329. Complaint, Oct. 3, 1940—Decision, Feb. 5, 1941

Where a corporation engaged in interstate sale and distribution of its ReVigator Pressure Cap and also of its ReVigator Liquid Home Treatment for Scalp and Hair, and ReVigator Liquid Shampoo and pair of circular combs constituting its ReVigator System of Home Treatment for the Scalp and Hair, and an individual who was its president and controlled and directed its advertising sales policies and general business practices; in advertisements which they disseminated and caused to be disseminated concerning said device and preparations through the mails and by other means in commerce and otherwise and including testimonial or purported testimonial statements or excerpts therefrom and which advertisements were intended and likely to induce purchase of said device and preparations—

Represented directly and by implication that use of said ReVigator Automatic Pressure Cap device provided a cure or remedy for falling hair, fading hair, thinning hair, and dandruff and baldness, and constituted a competent and effective treatment therefor and that its use would cause new hair to grow;

Facts being use of said device, either alone or in combination with such preparations, would not constitute a cure or remedy for aforesaid conditions or ailments, and had no therapeutic value in the treatment of any such conditions or disorders in excess of cleansing the hair and scalp and removing accumulated dandruff scales, and said device, either alone or in combination with said preparations, would have no therapeutic value in treatment of baldness and would not cause new hair to grow;

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 with effect of inducing purchase of said device and preparations by reason thereof:

Held, That said 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.

Mr. Robert H. Jamison, of Cleveland, Ohio, for respondents.

COMPLAINT

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

Corporation, a corporation, and E. O. Loeber, individually and as president of The ReVigator 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, The ReVigator Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, having its principal place of business at 1630 Hanna Building, in the city of Cleveland, State of Ohio. Respondent, E. O. Loeber, is an individual and president of said corporation. Said individual respondent has his principal place of business at the aforementioned address of said corporate respondent and controls and directs its advertising, sales policies, and general business practices.

PAR. 2. Respondent, The ReVigator Corporation, is now, and for more than 1 year last past has been, engaged in the business of selling and distributing a device known as "ReVigator Pressure Cap," which with the preparations "ReVigator Liquid Home Treatment for Scalp and Hair" and "ReVigator Liquid Shampoo" and a pair of circular combs constitutes what is designated by the corporate respondent as "The ReVigator System of Home Treatment for the Scalp and Hair." Said respondent, The ReVigator Corporation, causes said device and said preparations when sold either separately or in combination to be transported from its said place of business in the State of Ohio to the purchasers thereof located in various other States of the United States and in the District of Columbia. Said corporate respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device and preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the aforesaid business, the respondents, acting as aforesaid, have disseminated, and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning said device and preparations by United States mails and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, and respondents have also disseminated and are now disseminating, and have caused, and are now causing the dissemination of false advertisments concerning said device and preparations by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said device and preparations in commerce, as commerce is defined in the Federal Trade Commission

Act. Among and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

* * * Those who suffer from dandruff or other common scalp disorders—those whose hair is thinning or falling out excessively, due to neglect, those who are facing the prospect of premature baldness, are urged to follow the ReVigator System and get the full benefit of the regular daily treatment.

Losing your Hair? Are You Troubled With Dandruff, Itching Scalp, Excessively Falling or Thinning Hair?—these conditions CAN and should BE CORRECTED. Call at our office and we will tell you what our new and effective method has done for others right here in Cleveland and can do for you. * * *

The Re-Vigator Corp * * *

"* * * I can truthfully state that I have worn the cap consistently and there is no question but that I have grown hair. * * *".

"* * * My hair has stopped falling out and new hair has started to grow since I have been using the Cap. * * *"

"I wish to express my appreciation for the benefits received from the use of your pressure caps for restoring my hair. * * *"

"Have used it only a short time but my scalp and hair is very much improved; there is a good sized growth of new hair over the bald places and my hair is lustrous and healthy with some of the old color also restored. * * *"

"I have been wearing your scalp stimulator at least an hour a day since December, 1938, and can honestly say that it grows new hair. * * *"

PAR. 4. Through the use of the statements and representations hereinbefore set forth, and others similar thereto, not specifically set out herein, the respondents have represented directly and by implication that the use of said device, the ReVigator Automatic Pressure Cap, provides a cure or remedy for falling hair, fading hair, thinning hair, dandruff, and baldness, and constitutes a competent and effective treatment therefor, and that its use will cause new hair to grow.

PAR. 5. The foregoing statements and representations used and disseminated by the respondents, as herein set forth, are grossly exaggerated, false, and misleading. In truth and in fact, the use of said device, the ReVigator Automatic Pressure Cap, either alone or in combination with said preparations, does not constitute a cure or remedy for falling hair, fading hair, thinning hair, or dandruff, and has no therapeutic value in the treatment of any of such disorders or conditions in excess of cleansing the hair and scalp and temporarily removing accumulated dandruff scales. Said device alone or in combination with said preparations will have no therapeutic value in the treatment of baldness and will not cause new hair to grow.

PAR. 6. The use by respondents of the aforesaid false and misleading statements, representations, and advertisements, disseminated, as aforesaid, with respect to said device, the ReVigator Automatic Pressure Cap, when used either alone or in combination with 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 statements, representations, and advertisements are true, and induce the purchase of said device and preparations because of such erroneous and mistaken belief.

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 October 3, 1940, issued and on October 4, 1940, served its complaint in this proceeding upon respondents, The ReVigator Corporation, a corporation, and upon E. O. Loeber, individually and as president of The ReVigator Corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers, the Commission by order entered herein granted respondents' motions for permission to withdraw their 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 came on for final hearing before the Commission on the said complaint and substitute answers, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The ReVigator Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, having its principal place of business at 1630 Hanna Building, in the city of Cleveland, State of Ohio. Respondent, E. O. Loeber, is an individual and president of said respondent corporation. Said individual respondent has his principal place of

business at the aforementioned address of said corporate respondent and controls and directs its advertising, sales policies, and general business practices.

PAR. 2. Respondent, The ReVigator Corporation, is now, and for more than 1 year last past has been, engaged in the business of selling and distributing a device known as "ReVigator Pressure Cap," which with the preparations "ReVigator Liquid Home Treatment for Scalp and Hair" and "ReVigator Liquid Shampoo" and a pair of circular combs constitutes what is designated by the corporate respondent as "The ReVigator System of Home Treatment for the Scalp and Hair." Said respondent, The ReVigator Corporation causes said device and said preparations when sold either separately or in combination to be transported from its said place of business in the State of Ohio to the purchasers thereof located in various other States of the United States and in the District of Columbia. Said corporate respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device and preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the aforesaid business, the respondents, acting as aforesaid, have disseminated, and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning said device and preparations by United States mails and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning said device and preparations by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said device and preparations in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

* * * Those who suffer from dandruff or other common scalp disorders—those whose hair is thinning or falling out excessively, due to neglect, those who are facing the prospect of premature baldness, are urged to follow the ReVigator System and get the full benefit of the regular daily treatment.

Losing your Hair? Are You Troubled With Dandruff, Itching Scalp, Excessively Falling or Thinning Hair?—these conditions CAN and should BE CORRECTED. Call at our office and we will tell you what our new and effective method has done for others right here in Cleveland and can do for you. * * *

The Re-Vigator Corp. * * *

"* * * I can truthfully state that I have worn the cap consistently and there is no question but that I have grown hair * * *"

"* * * My hair has stopped falling out and new hair has started to grow since I have been using the Cap. * * *"

"I wish to express my appreciation for the benefits received from the use of your pressure caps for restoring my hair. * * *"

"Have used it only a short time but my scalp and hair is very much improved; there is a good sized growth of new hair over the bald places and my hair is lustrous and healthy with some of the old color also restored. * * *"

"I have been wearing your scalp stimulator at least an hour a day since December, 1938, and can honestly say that it grows new hair. * * *"

PAR. 4. Through the use of the statements and representations hereinbefore set forth, and others similar thereto, not specifically set out herein, the respondents have represented directly and by implication that the use of said device, the ReVigator Automatic Pressure Cap, provides a cure or remedy for falling hair, fading hair, thinning hair, dandruff, and baldness, and constitutes a competent and effective treatment therefor, and that its use will cause new hair to grow.

PAR. 5. The foregoing statements and representations used and disseminated by the respondents, as herein set forth, are grossly exaggerated, false, and misleading. In truth and in fact, the use of said device, the ReVigator Automatic Pressure Cap, either alone or in combination with said preparations, does not constitute a cure or remedy for falling hair, fading hair, thinning hair, or dandruff, and has no therapeutic value in the treatment of any such disorders or conditions in excess of cleansing the hair and scalp and temporarily removing accumulated dandruff scales. Said device alone or in combination with said preparations will have no therapeutic value in the treatment of baldness and will not cause new hair to grow.

PAR. 6. The use by respondents of the aforesaid false and misleading statements, representations, and advertisements, disseminated, as aforesaid, with respect to said device, the ReVigator Automatic Pressure Cap, either alone or in combination with 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 statements, representations, and advertisements are true, and induces the purchase of said device and preparations because of such erroneous and mistaken belief.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the 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 its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, The ReVigator Corporation, a corporation, and its officers, and E. O. Loeber, individually and as president of The ReVigator Corporation, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of their product, a device known as "ReVigator Pressure Cap," either alone or in combination with respondents' preparations "ReVigator Liquid Home Treatment for Scalp and Hair" and "ReVigator Liquid Shampoo," or any other device or products of substantially similar composition 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 advertisements (*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 the use of said device, ReVigator Pressure Cap, either alone or in combination with respondents' products, ReVigator Liquid Home Treatment for Scalp and Hair and ReVigator Liquid Shampoo, or with either of them, or in combination with any other similar preparation or preparations, constitutes a cure or remedy for falling hair, fading hair, thinning hair, or dandruff, or has any therapeutic value in the treatment of any of such disorders or conditions in excess of cleansing the hair and scalp and temporarily removing accumulated dandruff scales, or has any therapeutic value in the treatment of baldness or causes new hair to grow.

2. 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 device, Revigator Pressure Cap, either alone or in combination with respondents' preparations, which advertisements contain any of the representations prohibited in paragraph 1 hereof.

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

E. B. HALL, TRADING AS E. W. HALL

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

Docket 4330. Complaint, Oct. 3, 1940—Decision, Feb. 5, 1941

Where an individual engaged in interstate sale and distribution of his "Texas Wonder" medicinal preparation in advertisements thereof which he disseminated and caused to be disseminated through the mails and newspapers and periodicals, and by radio continuities, and in circulars, leaflets, pamphlets, and other advertising literature, and otherwise in commerce and by various means, and including also use of purported testimonial letters or excerpts thereof in pamphlets, booklets and other advertising copy—

Represented, directly and through inference, that his said product constituted a cure or remedy for, and possessed substantial therapeutic value in treatment of, kidney and bladder disorders, including inflammation of bladder and kidneys, stones in kidneys, and tuberculosis of kidneys, diabetes, rheumatism, swollen joints, weak and lame back, pains in the back, and lumbago, facts being it did not constitute a cure or remedy for said various ailments and conditions or possess any therapeutic value in the treatment thereof, in excess of such slight symptomatic relief as it might afford in cases of swollen joints and pains in the back by reason of its properties as a mild diuretic;

With the effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false representations were true, and with result, as consequence of such erroneous and mistaken belief, that purchasing public was induced to and did purchase 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. J. W. Brookfield, Jr. for the Commission.

Flynn & Mohrman, of St. Louis, 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 E. B. Hall, an individual trading as E. W. Hall, 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, E. B. Hall, is an individual doing business under the trade name of E. W. Hall, with his principal office and place of business located at 3679 Olive Street, in the city of St. Louis, State of Missouri.

Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of a certain medicinal preparation known as "Texas Wonder," intended for use in the treatment of various ailments and conditions of the human body. In the course and conduct of his business, respondent causes said medicinal preparation, when sold, to be transported from his place of business in the State of Missouri to the purchasers thereof at their respective points of location in 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 preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said 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 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, by radio continuities, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

THE TEXAS WONDER

For Kidney and Bladder Troubles, Rheumatism and Kindred Diseases

* * * the remedy that for 47 years has been bringing relief to those who suffer from kidney, bladder, and rheumatic conditions.

Texas Wonder is also used to help such irregularities as kidney and bladder conditions for both men and women * * * inflammation of the bladder * * * weak and lame back * * * swollen joints and so forth.

A TEXAS WONDER

For certain Irregularities of the Kidneys and Bladder and Certain So-called Rheumatic Pains

In addition to the foregoing advertisements, the respondent disseminates false advertisements in the same manner as set out above through the use of purported testimonial letters, excerpts from which the respondent places in pamphlets, booklets, and advertising copy. Among and typical of the false statements and representations contained in such excerpts are the following:

* * * she had inflammatory rheumatism for about a year. She used the remedy about two months and got well and has remained well ever since.

* * * he had kidney and bladder trouble and was relieved altogether by two weeks' treatment with the Texas Wonder.

* * * he had kidney and rheumatic trouble. He took about one bottle —"the result was that it cured me entirely"—occupying about a month. He had no return of trouble.

* * * he began using The Texas Wonder for stone in the kidneys, inflammation of the bladder and tuberculosis of the kidneys as diagnosed by his physicians. His urine contained 40% pus. One of the physicians advised that only an operation could give relief. He was operated upon without results. He began using The Texas Wonder in 1915, when his weight was 114. He was still using the medicine with wonderful results, and his weight had increased to 138 lbs.

* * * he took The Wonder for terrible pains in the back. He took a half bottle and was relieved and had no trouble since.

* * * he had lumbago and inflammation of the kidneys. He took about a quarter of a bottle and since has had no trouble.

* * * he had kidney and bladder trouble, with rheumatism. He took The Wonder for six months—having before been treated by every physician in Reynolds County without relief. He was unable to go about, when he began with The Wonder and was entirely relieved.

* * * I was cured of a bad case of kidney and bladder complaint by the use of one-half bottle of The Texas Wonder.

* * * he had diabetes, his urine showing 18 per cent sugar. He took the treatment for a year or more and got all right. His weight had been reduced from 255 to 160 pounds, but was restored after treatment. He was relieved from sugar and regained his normal condition.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and other similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of respondent's preparation, respondent has represented, and does now represent, directly and through inference, that his said preparation constitutes a cure or rem-

edy for, and possesses substantial therapeutic value in the treatment of, kidney and bladder disorders, including inflammation of the bladder and kidneys, stones in the kidneys and tuberculosis of the kidneys, diabetes, rheumatism, swollen joints, weak and lame back, pains in the back, and lumbago.

PAR. 4. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation does not constitute a cure or remedy for inflammation of the bladder or kidneys, stones in the kidneys, tuberculosis of the kidneys, or any other disorders of the bladder or kidneys, diabetes, rheumatism, swollen joints, weak or lame back, pains in the back, or lumbago. Nor does said preparation possess any therapeutic value in the treatment of any of such ailments or conditions, in excess of such slight symptomatic relief as it may afford in cases of swollen joints and pains in the back, by reason of its properties as a mild diuretic.

PAR. 5. 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 representations are true, 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 product.

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 October 3, 1940, issued and on October 8, 1940, served its complaint in this proceeding upon respondent E. B. Hall, individually and trading as E. W. Hall, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. After the issuance of the said 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, E. B. Hall, is an individual doing business under the trade name of E. W. Hall, with his principal office and place of business located at 3679 Olive Street, in the city of St. Louis, State of Missouri.

Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of a certain medicinal preparation known as "Texas Wonder," intended for use in the treatment of various ailments and conditions of the human body. In the course and conduct of his business, respondent causes said medicinal preparation, when sold, to be transported from his place of business in the State of Missouri to the purchasers thereof at their respective points of location in 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 preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid businesss, 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; 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, by radio continuities, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

THE TEXAS WONDER

For Kidney and Bladder Troubles, Rheumatism and Kindred Diseases

* * * the remedy that for 47 years has been bringing relief to those who suffer from kidney, bladder and rheumatic conditions.

Texas Wonder is also used to help such irregularities as kidney and bladder conditions for both men and women * * * inflammation of the bladder * * * weak and lame back * * * swollen joints and so forth.

A TEXAS WONDER

For Certain Irregularities of the Kidneys and Bladder and Certain So-called Rheumatic Pains

In addition to the foregoing advertisements, the respondent disseminates false advertisements in the same manner as set out above through the use of purported testimonial letters, excerpts from which the respondent places in pamphlets, booklets, and advertising copy. Among and typical of the false statements and representations contained in such excerpts are the following:

* * * she had inflammatory rheumatism for about a year. She used the remedy about two months and got well and has remained well ever since.

* * * he had kidney and bladder trouble and was relieved altogether by two weeks' treatment with the Texas Wonder.

* * * he had kidney and rheumatic trouble. He took about one bottle—"the result was that it cured me entirely"—occupying about a month. He had no return of trouble.

* * * he began using The Texas Wonder for stone in the kidneys, inflammation of the bladder and tuberculosis of the kidneys as diagnosed by his physicians. His urine contained 40% pus. One of the physicians advised that only an operation could give relief. He was operated upon without results. He began using The Texas Wonder in 1915, when his weight was 114. He was still using the medicine with wonderful results, and his weight had increased to 138 lbs.

* * * he took The Wonder for terrible pains in the back. He took a half bottle and was relieved and had no trouble since.

* * * he had lumbago and inflammation of the kidneys. He took about a quarter of a bottle and since has had no trouble.

* * * he had kidney and bladder trouble, with rheumatism. He took The Wonder for six months—having before been treated by every physician in Reynolds County without relief. He was unable to go about, when he began with The Wonder and was entirely relieved.

* * * I was cured of a bad case of kidney and bladder complaint by the use of one-half bottle of The Texas Wonder.

* * * he had diabetes, his urine showing 18 percent sugar. He took the treatment for a year or more and got all right. His weight had been reduced from 255 to 160 pounds, but was restored after treatment. He was relieved from sugar and regained his normal condition.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of respondent's preparation, respondent has represented, and does now represent, directly and through inference, that his said preparation constitutes a cure or remedy for, and possesses substantial therapeutic value in the treatment of, kidney and bladder disorders, including inflammation of the bladder and kidneys, stones in the kidneys and tuberculosis of the kidneys, diabetes, rheumatism, swollen joints, weak and lame back, pains in the back, and lumbago.

PAR. 4. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation does not constitute a cure or remedy for inflammation of the bladder or kidneys, stones in the kidneys, tuberculosis of the kidneys, or any other disorders of the bladder or kidneys, diabetes, rheumatism, swollen joints, weak or lame back, pains in the back, or lumbago. Nor does said preparation possess any therapeutic value in the treatment of any of such ailments or conditions, in excess of such slight symptomatic relief as it may afford in cases of swollen joints and pains in the back, by reason of its properties as a mild diuretic.

PAR. 5. 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 representations are true, 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 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 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 E. B. Hall, individually and trading under the name of E. W. Hall, 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 known as Texas Wonder or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or 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 inflammation of the bladder or kidneys, stones in the kidneys, tuberculosis of the kidneys, or any other disorder of the bladder or kidneys, or for diabetes, rheumatism, swollen joints, weak or lame back, pains in the back, or lumbago; that said preparation possesses any therapeutic value in the treatment of any of said ailments or conditions, in excess of such slight symptomatic relief as it may afford in cases of swollen joints and pains in the back, by reason of its properties as a mild diuretic.

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.

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

INTERSTATE BAKERIES CORPORATION (INTERSTATE BAKING CORPORATION),[1] THE CONTINENTAL BAKING COMPANY, THE SIOUX CITY BAKERY, LOCAL NO. 383 OF THE CHAUFFEURS, ETC., UNION, 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 3900. Complaint, Sept. 28, 1939—Decision, Feb. 6, 1941

Where (1) three corporations and four individuals engaged in manufacture of bakery products at Sioux City, Iowa, and in sale thereof in said city and State and also, in case of certain of their number, in sale and distribution of such products in other States, and engaged in competition with one another, and with corporation which, with baking plant at Omaha, shipped therefrom its products to customers in Sioux City, and also with other bakeries located without State of Iowa and which were selling bakery products in said city last referred to, (2) an unincorporated association or labor union in said city, members of which did not operate bakeries and were not engaged in trade and commerce, but were employees of bakeries and operated delivery trucks belonging thereto, and (3) seven individuals, who were officers and members of said union; following strike at said city called by said union and its officers and members, including union drivers of bakery trucks, the stopping of work and prevention of sale and distribution of bakery products, and the initiation of negotiations between the bakers of said city and said union and its members—

Entered into an agreement under which, among other things, it was provided that "Within the corporate limits of Sioux City, Iowa, no bakery products shall be sold to independent bread or cake men for either retail or wholesale resale who were not operating wholesale or retail routes prior to January 1, 1938," and conformed thereto and made no sales of bakery products to persons who had not been operating wholesale or retail bakery routes in said city prior to date aforesaid;

With the result that—

(1) Independent route men who theretofore had been buying bakery products from bakeries located without the State and shipped and delivered in city aforesaid to themselves, by whom they were sold to general purchasing public, were forced, by the threats of members of said union, who, following said agreement, accosted such independent route men, to cease operations and go out of business;

(2) Corporation above referred to, with Omaha plant and which was not party to aforesaid contract and agreement and undertook to continue shipping, first directly and then indirectly, to independent route man in

[1] Complaint dismissed, however, as to respondent named by terms of cease and desist order entered against other respondents joined in proceeding.

said city, finally declined, after having its attention twice invited by said union and members to provision of contract and agreement undertaken by others, to sell and ship further, as aforesaid, its bakery products from its Omaha plant to said route man, who was thereby forced to discontinue sale of bakery products at said city and notwithstanding deposit by him with said corporation of cash bond of about $100; and

(3) Sale of said bakery products in trade and commerce among and in the several States was unduly and unlawfully restricted and restrained, and public was deprived of the benefits that would flow from normal competition among and between said bakeries in said commerce, and competition was eliminated, with tendency and capacity of creating a monopoly in said Sioux City bakeries in sale in such commerce of said bakery products:

Held, That such understanding, agreement, combination, and conspiracy, and things done thereunder and pursuant thereto and in furtherance thereof, as above set forth, constituted unfair method of competition in commerce.

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

Mr. Floyd O. Collins for the Commission.

Mr. John C. Grover, of Kansas City, Mo., for Interstate Bakeries Corp.

Mr. George Faunce, Jr. and *Mudge, Stern, Williams & Tucker*, of New York City, for The Continental Baking Co.

Mr. Frank J. Margolin, of Sioux City, Iowa, for The Sioux City Bakery.

Sifford & Wadden, of Sioux City, Iowa, for Metz Brothers Baking Co., Fred W. Lenhardt and Jake Schindler.

Mr. Donald S. Peter, of Sioux City, Iowa, for Emil A. Madsen.

Mr. George M. Paradise, of Sioux City, Iowa, for Anthony Pages.

Mr. John W. Keane, of Sioux City, Iowa, for Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union and the officers and members thereof.

COMPLAINT [2]

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the corporations, associations, firms, and individuals named in the caption hereof, 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 said Commission that a proceed-

[2] By stipulations entered into the record it was agreed that the correct names of respondents named in the complaint as Interstate Baking Corporation, Madsen Baking Co., and Jake Schintler were, respectively, Interstate Bakeries Corporation, Madsen Bakery, and Jake Schindler.

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

PARAGRAPH 1. Respondent, Interstate Baking Corporation, 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 118 West Forty-seventh Street, Kansas City, Mo. Said respondent operates, and at all times herein mentioned has operated, baking plants in numerous cities of the United States, including the city of Omaha, State of Nebraska, where it operates a baking plant under the trade name of Schulze Baking Co., from which plant it now ships, and at all times herein mentioned has shipped, bread, pastries, cakes, and other bakery products for human consumption to purchasers thereof located in the State of Iowa, and more particularly in the city of Sioux City in said State.

Respondent, Continental Baking 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 634 Rockefeller Center, New York, N. Y. It owns and operates, and at all times herein mentioned has owned and operated, baking plants in various cities of the United States, including Sioux City, Iowa.

Respondent, Sioux City Bakery, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business located at 815 West Seventh Street, in the city of Sioux City, Iowa, where it owns and operates, and at all times herein mentioned has owned and operated, a baking plant.

Respondent, Metz Brothers Baking Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business located at 408 Pearl Street, in the city of Sioux City, Iowa, where it owns and operates, and at all times herein mentioned has owned and operated, a baking plant.

Respondent, Fred W. Lenhardt, is an individual, trading and doing business under the name Quality Bakery, at Third and Sioux Streets, Sioux City, Iowa, where he owns and operates, and at all times herein mentioned has owned and operated, a baking plant.

Respondent, Emil A. Madsen, is an individual trading and doing business under the name Madsen Baking Co., at 2701 East Second Street, Sioux City, Iowa, where he owns and operates, and at all times herein mentioned has owned and operated, a baking plant.

Respondent, Jake Schintler, is an individual trading and doing business under the name Iowa Bakery Co., at 1312 Pierce Street, Sioux City, Iowa, where he owns and operates, and at all times herein mentioned has owned and operated, a baking plant.

Respondent, Anthony Pages, is an individual trading and doing business under the name Sunkist Cake and Pie Co., at 9 West Third Street, Sioux City, Iowa, where he owns and operates, and at all times herein mentioned has owned and operated, a baking plant.

PAR. 2. Respondent, Local No. 383, of the Chauffeurs, Teamsters, and Stablemen and Helpers Union is an unincorporated association whose membership is composed of chauffeurs, teamsters, stablemen and their helpers located in the city of Sioux City, Iowa, and in the territory adjacent thereto. The address of said respondent, Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union is 410½ Fifth Street, Sioux City, Iowa. Of its members the following now constitute, and since its organization have constituted, its executive committee and its officers, to wit:

Glenn Beaman, president.
Charles Cunningham, secretary-treasurer.
Jim Brookhart, trustee.
William Carlson, trustee.
O. G. Foster, trustee.
Ralph Johnson, trustee.
Howard Foutz, trustee.

Members of respondent Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union are operators of automobiles and other conveyances used in transporting and delivering bread, pastries, cakes and other bakery products in and into Sioux City, Iowa, and in the territory adjacent thereto, and constitute a class so numerous and which changes so often as to make it impractical to name all of them as parties respondent herein without manifest inconvenience and delay and the officers and members hereinabove named as respondents are made parties respondent in their individual capacity and as officers and members of the respondent, Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, and as representatives of the membership of said respondent as a class.

PAR. 3. In the course and conduct of their respective businesses, the respondents named in paragraph 1 hereof ship, or cause to be shipped, bread, pastries, cakes, and other bakery products, when manufactured by them, from their respective bakeries to the pur-

chasers thereof located in various States of the United States other than the State of the origin of such shipments. There is now, and has been for more than two whole years last past, a constant current of trade in commerce between and among the various States of the United States, by all respondents named in paragraph 1 hereof in bread, pastries, cakes, and other bakery products.

PAR. 4. There are bakeries outside of the State of Iowa which sell and distribute bread, pastries, cakes, and other bakery products in the State of Iowa, and as part of said sale, ship, or cause to be shipped, said products from their respective places of business in these other States to the purchasers thereof located in the State of Iowa. In the course and conduct of their respective businesses, the respondents named in paragraph 1 hereof have been, and are now, in competition with these bakeries situated in States other than the State of Iowa in making and seeking to make sales of their bakery products in the State of Iowa.

PAR. 5. The respondents named in paragraph 1 hereof constitute a group in the baking business in Sioux City, Iowa, which is so large and influential in the trade area in and around Sioux City, Iowa, as to be able to control and influence the flow of trade and commerce in bread, pastries, cakes, and other bakery products 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 bakeries and dealers in bread, pastries, cakes and other bakery products in the sale and distribution of said products in said commerce and in said trade area but for the wrongful and unlawful understanding, agreement, combination, and consipiracy, and the unlawful acts and practices done thereunder and pursuant thereto as hereinafter set out.

PAR. 6. There are now, and have been for a number of years last past, so-called independent route men who buy bread, pastries, cakes, and other bakery products from bakeries and resell the same both to stores for resale and direct to consumers, in the trade area in and around the city of Sioux City, Iowa. Some of these independent route men were in business and operating routes on and prior to January 1, 1938, and others began after January 1, 1938. These independent route men and some of the respondents named in paragraph 1 hereof, purchase bread, pastries, cakes, and other bakery products from bakeries located both in Iowa and other States and when such purchases are made by them from bakeries located in States other than Iowa, said bakeries ship, or cause to be shipped,

their products from their respective places of business to these purchasers thereof in the State of Iowa.

PAR. 7. On or about August 12, 1938, the respondent entered into, and thereafter carried out, and are still carrying out, an understanding, agreement, combination, and conspiracy to suppress, hinder, and lessen competition in the interstate sale and distribution of bread, pasteries, cakes, and other bakery products in the trade area in and around Sioux City, Iowa.

PAR. 8. Pursuant to said understanding, agreement, combination, and conspiracy, and in furtherance thereof, the respondents have done, among other acts and things, the following:

1. Agreed to prevent, and did prevent, independent route men who were not in business in the trade area in and around Sioux City, Iowa, prior to January 1, 1938, from obtaining bread, pastries, cakes, and other bakery products to sell either at wholesale or retail in said trade area.

2. Agreed to set apart and did set apart as a class of approved dealers who could, and did, sell bread, pastries, cakes, and other bakery products in said trade area, the respondents named in paragraph 1 and the independent route men who were in business prior to January 1, 1938.

3. All of the respondents named in paragraph 1 except respondent, Interstate Baking Corporation, did enter into on August 12, 1938, and thereafter carried out, contracts with respondent, Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, which contracts provide, in part, as follows: "Within the corporate limits of Sioux City, Iowa, no bakery products shall be sold to independent bread or cake men for either retail or wholesale resale who were not operating wholesale or retail routes prior to January 1, 1938".

4. Respondent, Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union (*a*) exacted and procured pledges from the signers of said contracts and from bakeries and dealers not signers of said contracts, particularly from respondent Interstate Baking Corporation, to adhere to and enforce the provisions of said contracts and to carry out the plans therein set forth; (*b*) intimidated and harassed and used force and violence against independent route men who sought to enter business subsequent to January 1, 1938, to prevent their delivering bakery products in said trade area; and (*c*) intimidated, harassed, and used force and violence against bakeries and dealers who did not sign such contracts of August 12, 1938, to persuade, induce, and compel them to stop selling their products to

independent route men who were not in business prior to January 1, 1938, and also to prevent their selling to bakeries and dealers who intended to resell their products to such independent route men.

5. Used and engaged in other cooperative and concerted actions and violent and coercive methods and practices in carrying out the aforesaid understanding, agreement, combination, and conspiracy.

PAR. 9. 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 understanding, agreement, combination, and conspiracy hereinbefore set out.

PAR. 10. The understanding, agreement, combination, and conspiracy and the acts and things done thereunder pursuant thereto and in furtherance thereof as hereinbefore alleged, have had, and do have the capacity, tendency, and effect of unlawfully restricting and restraining the movement in commerce between and among the several States of the United States of bread, pastries, cakes, and other bakery products, and more particularly the movement of said products in commerce between the State of Iowa and States surrounding it; of unduly and unlawfully restraining and restricting trade in such products in said commerce; of monopolizing in the respondents named in paragraph 1 hereof and the independent route men who were in business prior to January 1, 1938, the sale and distribution of said products in the trade area in and around Sioux City, Iowa; and the capacity and tendency to substantially enhance the prices of such baking products to the consuming public in said area and maintaining said prices at artificial levels, and otherwise to deprive the consuming public in said area of the benefit of normal competition between and among the respondents named in paragraph 1 hereof, the independent route men who were in business prior to January 1, 1938, and the independent route men who have sought to engage in business since January 1, 1938.

PAR. 11. Said understandings, agreement, combination, and conspiracy and the things done thereunder in pursuance thereto 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 September 28, 1939, issued and served its complaint in this proceeding upon the respondents

Interstate Bakeries Corporation, a corporation; The Continental Baking Co., a corporation; The Sioux City Bakery, a corporation; Metz Brothers Baking Co., a corporation; Fred W. Lenhardt, an individual trading as Quality Bakery; Emil A. Madsen, an individual trading as Madsen Bakery; Jake Schindler, an individual trading as Iowa Bakery Co.; Anthony Pages, an individual trading as Sunkist Cake and Pie Co.; Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, an unincorporated association, and Glenn Beamen, Charles Cunningham, Jim Brookhart, William Carlson, O. G. Foster, Ralph Johnson, and Howard Foutz, individually and as officers and members of Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, and as representatives of other members thereof, charging them with entering into and carrying out an understanding, agreement, combination, and conspiracy to suppress, hinder, and lessen competition in the interstate sale and distribution of bread, pastries, cakes, and other bakery products in the trade area in and around Sioux City, Iowa; in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Floyd O. Collins, attorney for the Commission, and in opposition to the allegations of the complaint by John C. Grover, attorney for respondent Interstate Bakeries Corporation; George Faunce, Jr., attorney for respondent Continental Baking Co.; B. L. Sifford, attorney for respondents Metz Brothers Baking Co., Fred W. Lenhardt, an individual trading as Quality Bakery, and Jake Schindler, an individual trading as Iowa Bakery Co.; John W. Keene, attorney for respondent Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, an unincorporated association, and Glenn Beamen, Charles Cunningham, Jim Brookhart, William Carlson, O. G. Foster, Ralph Johnson, and Howard Foutz, individually and as officers and members of Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, and as representatives of other members thereof; Frank J. Margolin, attorney for respondents Sioux City Bakery; Donald S. Peter, attorney for respondent Emil A. Madsen, doing business as Madsen Bakery, and George M. Paradise, attorney for Anthony Pages, an individual trading as Sunkist Cake and Pie Co., before John L. Hornor, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence was duly recorded and filed at the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answers

thereto, testimony and other evidence, brief in support of the complaint and brief of Interstate Bakeries Corporation, 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, Interstate Bakeries Corporation, is a corporation organized and 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 118 West Forty-seventh Street, Kansas City, Mo. It operates, among other things, a baking plant at Omaha, Nebr., under the trade name Schulze Baking Co., and is engaged in the baking and sale of bread, pastries, cakes, and other bakery products for human consumption.

Respondent, Continental Baking Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 100 West Tenth Street, Wilmington, Del. It is engaged in the manufacture and sale of bakery products at, among other locations, Sioux City, Iowa.

Respondent, Sioux City Bakery, is a corporation organized, existing, and doing business under the laws of the State of Iowa with its office and principal place of business located at 815 West Seventh Street, Sioux City, Iowa. It is engaged in the manufacture and sale of bakery products.

Respondent, Metz Brothers Baking Co., is a corporation existing and doing business under and by virtue of the laws of the State of Iowa with its principal office and place of business in Sioux City, Iowa. It is engaged in the business of baking bread, rolls, and doughnuts and in the sale thereof.

Respondent, Fred W. Lenhardt, is an individual engaged in the operation of baking bread under the trade name of Quality Bakery with its office and principal place of business located in Sioux City, Iowa. He is engaged in the sale and distribution of bakery products.

Respondent, Emil A. Madsen, is an individual doing business under the trade name Madsen Bakery with his office and principal place of business located at Sioux City, Iowa. He is engaged in the manufacture and sale of bakery goods, pies, and pastry. He manufactures and sells no bread.

Respondent, Jake Schindler, is an individual doing business under the trade name Iowa Bakery Co., with office and principal place of business located in Sioux City, Iowa. He is engaged in the manufacture and sale of bread and other bakery products.

Respondent, Anthony Pages, is an individual doing business under the trade name Sunkist Cake and Pie Co. with his office and place of business located at Sioux City, Iowa. He is engaged in the manufacture and sale of bread, pastries, cakes, and other bakery products.

Respondent, Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, is an unincorporated association, located at Sioux City, Iowa. Respondents, Glenn Beamen, Charles Cunningham, Jim Brookhart, William Carlson, O. G. Foster, Ralph Johnson, and Howard Foutz, are individuals and officers and members of Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union and are also representatives of the other members of said Union with their principal place of business located in Sioux City, Iowa.

PAR. 2. Respondent, Interstate Bakeries Corporation, upon receipt of orders, shipped its products from its place of business in Omaha, Nebr., to its customers located in Sioux City, Iowa.

Respondent, Continental Baking Co., shipped its bakery products from its bakery at Sioux City, Iowa, across State lines to purchasers located in South Dakota, Minnesota, and Nebraska. The salesmen take out a loaf of bread and put bread in the store without it having been previously ordered.

Respondent, Sioux City Bakery, sells and distributes its products in the State of Iowa.

Respondent, Metz Brothers Baking Co., sells and distributes its products in Sioux City, Iowa; Yankton, S. Dak.; and Norfolk, Nebr. This merchandise is transported on respondent's trucks and sold from the truck without previous order having been given therefor.

Respondent, Fred W. Lenhardt, an individual doing business under the trade name of Quality Bakery, sells and delivers his products only in the State of Iowa.

Emil A. Madsen, an individual doing business under the trade name Madsen Bakery, sells and distributes his products only in the State of Iowa.

Respondent, Jake Schindler, an individual doing business under the trade name Iowa Bakery Co., sells and distributes his products in Sioux City, Iowa, and through the medium of four operators who transport bread and bakery products on their own trucks from Sioux City, Iowa, to customers in States other than the State of Iowa.

These products have not been previously ordered and are sold to the store owners in the towns where the stores are located. When customers need a special order for bakery products, they will telephone the bakery and give the order therefor to be later delivered.

Respondent, Anthony Pages, is an individual doing business under the trade name of Sunkist Cake and Pie Co. and sells and distributes his bakery products only in Sioux City, Iowa.

Respondent, Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, is an unincorporated association located in Sioux City, Iowa. The individual respondents, Glenn Beamen, Charles Cunningham, Jim Brookhart, William Carlson, O. G. Foster, Ralph Johnson, and Howard Foutz are officers and members of said Union. Respondent Union and its members do not operate bakeries and are not engaged in trade and commerce, but the members of said Union are employees of bakeries and operate delivery trucks belonging to the different bakeries.

PAR. 3. Each of the aforesaid respondents, other than respondent union and its members, was in competition with the other respondents and with other bakeries located outside of the State of Iowa which were selling bakery products in Sioux City, Iowa.

PAR. 4. In 1938 the respondent union, its officers, and members called a strike at Sioux City, Iowa, and all the union drivers of bakery trucks joined therein, stopped work, and prevented the sale and distribution of bakery products. Negotiations were then entered into between Sioux City bakeries and the respondent union and its members and an agreement was reached which was evidenced by a written contract that contained, among other things, the following provisions:

> Within the corporate limits of Sioux City, Iowa, no bakery products shall be sold to independent bread or cake men for either retail or wholesale resale who were not operating wholesale or retail routes prior to January 1, 1938.

Said written contract was signed by, or on behalf of, all respondents except Interstate Bakeries Corporation. After said contracts and agreements were signed by said respondent Union and said respondents Sioux City bakeries, said respondents Sioux City, Iowa, bakeries, conformed to the terms of said contract and agreement and made no sales of bakery products to persons who had not been operating wholesale or retail bakery routes in Sioux City, Iowa, prior to January 1, 1938. Respondent, Interstate Bakeries Corporation, did not sign this contract and agreement.

PAR. 5. Prior to said respondents, other than respondent Interstate Bakeries Corporation, entering into this contract and agreement,

there were independent route men buying bakery products from bakeries located outside of the State of Iowa and having said bakery products shipped into Sioux City, Iowa, which products were delivered to them by the transportation companies and said bakery products were sold by said independent route men to the general purchasing public. After the said agreement was entered into by said respondents, members of the respondent Union accosted the said independent route men and by threats forced them to cease their operation and go out of business.

PAR. 6. The Interstate Bakeries Corporation did not sign a written contract with respondent union but subsequent to the signing of the aforesaid contract and agreement by and on behalf of the respondent union and the respondents, Sioux City, Iowa, bakeries, other than the Interstate Bakeries Corporation, the respondent, Interstate Bakeries Corporation, sold bakery products to an independent route man named Bolen located at Sioux City, Iowa, for resale to the purchasing public and shipped said bakery products from its Omaha, Nebr., plant to Bolen and Sioux City, Iowa. The respondent union, its officers, and members, called to the attention of the respondent Interstate Bakeries Corporation that the selling of bakery products to Bolen was in violation of the contract signed by the other respondents which provides that:

> Within the corporate limits of Sioux City, Iowa, no bakery products shall be sold to independent bread or cake men for either retail or wholesale resale who were not operating wholesale or retail routes prior to January 1, 1938.

Whereupon, the Interstate Bakeries Corporation stopped selling bakery products to Bolen. The Interstate Bakeries Corporation sought to continue selling to Bolen by shipping bakery products to a Mr. Berg at South Sioux City, Nebr., and requested Mr. Bolen to secure these products from Mr. Berg at his place of business. Respondent union then called attention to respondent, Interstate Bakeries Corporation, that selling to Bolen through Berg was a deliberate subterfuge to defeat the terms and provisions of the said contract and agreement referred to above and of respondent, Interstate Bakeries Corporation's promise of compliance with respondent union's request. Thereafter, respondent, Interstate Bakeries Corporation, cooperating with respondent union, declined to sell and ship its bakery products from its plant at Omaha, Nebr., to Mr. Bolen or Mr. Berg and Mr. Bolen was thus forced by respondents to discontinue the sale of bakery products at Sioux City, Iowa, although he had on deposit with respondent Interstate Bakeries Corporation a cash bond of approximately $100.

PAR. 7. Each of said respondents, except Interstate Bakeries Corporation, acted in concert and in cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove set forth in furtherance of said understanding, agreement, combination, and conspiracy.

PAR. 8. Said understanding, agreement, combination, and conspiracy and the things done thereunder and pursuant thereto and in futherance thereof as hereinabove set forth have had and do have the effect of unduly and unlawfully restricting and restraining the sale of said bakery products in trade and commerce between, among, in, and with the several States of the United States; of unduly and unlawfully restricting and restraining trade and commerce in said bakery products in said commerce; of depriving the public of the benefits that would flow from the normal competition among and between the respondent bakeries in said commerce; of eliminating competition, with a tendency and capacity of creating a monopoly in said Sioux City, Iowa, bakeries in the sale of said bakery products in said commerce.

CONCLUSION

Said understanding, agreement, combination, and conspiracy, and the things done thereunder and pursuant thereto, and in furtherance thereof, as set forth above, constitutes an unfair method of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, briefs filed herein, oral argument not having been requested, and the Commission having made its findings as to the facts and its conclusion that the respondents, The Continental Baking Co., a corporation; The Sioux City Bakery, a corporation; Metz Brothers Baking Co., a corporation; Fred W. Lenhardt, an individual trading as Quality Bakery; Emil A. Madsen, an individual trading as Madsen Bakery; Jake Schindler, an individual trading as Iowa Bakery Co.; Anthony Pages, an individual trading as Sunkist Cake and Pie Co.; Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, an unincorporated association; and Glenn Beamen,

Charles Cunningham, Jim Brookhart, William Carlson, O. G. Foster, Ralph Johnson, and Howard Foutz, individually, and as officers and members of Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union and as representatives of other members thereof, have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, The Continental Baking Co., a corporation; The Sioux City Bakery, a corporation; Metz Brothers Baking Co., a corporation; Fred W. Lenhardt, an individual trading as Quality Bakery; Emil A. Madsen, an individual trading as Madsen Bakery; Jake Schindler, an individual trading as Iowa Bakery Co.; Anthony Pages, an individual trading as Sunkist Cake and Pie Co.; Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union, an unincorporated association; and Glenn Beamen, Charles Cunningham, Jim Brookhart, William Carlson, O. G. Foster, Ralph Johnson, and Howard Foutz, individually, and as officers and members of Local No. 383 of the Chauffeurs, Teamsters, and Stablemen and Helpers Union and as representatives of other members thereof, their agents, servants, and employees in connection with the offering for sale, sale, and distribution of bread, pastries, cakes, and other bakery products in commerce as commerce is defined in the Federal Trade Commission Act do forthwith cease and desist:

1. Entering into or carrying out any agreement or understanding, the purpose or effect of which is to hinder, lessen, or suppress competition in the purchase, sale, and distribution in said commerce of bread, cakes, or other bakery products.

2. Enforcing or attempting to enforce by any method or means any understanding or agreement, the purpose or effect of which is to lessen or suppress competition in the purchase, sale, and distribution in said commerce of bread, cakes, pastries, and other bakery products.

3. Entering into any agreement to classify dealers for the purpose or with the effect of hindering or preventing any dealer or any class of dealers from obtaining bread, pastries, cakes, or other bakery products in said commerce for resale or carrying out or enforcing any such agreement of classification.

4. The use of threats or other coercive methods or practices pursuant to agreement or understanding with each other or with others to prevent any bakery or dealer or route man from purchasing and receiving or selling and delivering bread, pastries, cakes, or other bakery products in said commerce.

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

It is further ordered, That the complaint as to the Interstate Bakeries Corporation be and the same hereby is dismissed.

IN THE MATTER OF

JACOBS 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 3586. Complaint, Sept. 14, 1938—Decision, Feb. 7, 1941

Where a corporation engaged in manufacture of candy and nut confections and in interstate 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 or distributed to consumers thereof, and which included (*a*) number of small bars of candy, number of medium sized bars and number of large bars, together with four-section punchboard for use in sale and distribution of said candy in accordance with plan and board's explanatory legend by which fact as to whether purchaser received, for 5 cents paid, small or medium sized bars was dependent upon securing of particular numbers by purchasers, and in accordance with which last number in each section entitled purchaser to one of the large bars, and under which purchaser who did not qualify by one of numbers calling for one of said bars, or last number in one of said four sections, received nothing for his money, (*b*) number of small boxes of candy and package containing 5-pound box and pillow, together with punchboard for use in sale and distribution of said products under a plan in accordance with which, and board's explanatory legend, amount paid for chance was dependent upon number obtained, and the securing of said small boxes were likewise dependent upon the obtaining of certain numbers by purchasers, and under which purchaser securing number corresponding with that concealed under card's master seal became entitled to the 5-pound box of candy and pillow, and those who did not qualify by obtaining number calling for one of small boxes or that corresponding to that under master seal received nothing for their money, and (*c*) various other assortments which were similar to those hereinbefore described and varied therefrom in detail only—

Sold such assortments to dealers in many States and retailers by whom, as direct to indirect purchasers thereof, they were exposed and sold to purchasing public in accordance with aforesaid sales plans or methods, 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 thereby supplied to and placed in the hands of others means of conducting lotteries in accordance with such sales plans, 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 but are unwilling to use said or any other sales plans or methods involving game of chance or sale of a chance to win something thereby, or any other sales plan or method contrary to public policy, and refrain therefrom;

With the result that many persons, because of said element of chance involved in said sales plans or methods employed by it as above described, were

induced to buy and sell its said merchandise in preference to that offered and sold by its competitors, whereby through use of said sales plans or methods, that trade was unfairly diverted to it from its competitors aforesaid; 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 commerce and unfair and deceptive acts and practices therein.

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

Mr. Edw. W. Thomerson and *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 Jacobs 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, Jacobs Candy Co., Inc., is a corporation organized and doing business under the laws of the State of Louisiana, with its principal office and place of business located at 827 Carondelet Street, New Orleans, La. Respondent is now and for some time last past has been engaged in the manufacture of candy and nut confections and in the sale and distribution thereof to dealers 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 place of business aforesaid to the 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 candy and nut confections in commerce between and among the various States of the United States and in the District of Columbia.

Par. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells, and has sold, to dealers certain assortments of candy and nut confections so packed and assembled as to

involve the use of a game of chance, gift enterprise, or lottery scheme, when sold and distributed to the consumers thereof. One of respondent's assortments is sold and distributed to the purchasing public in the following manner:

This assortment consists of a number of small bars of candy, a number of medium size bars of candy and a number of large bars of candy, together with a device commonly called a punchboard. The said board is divided into four sections. Sales are 5 cents each. The board bears statements or legends informing purchasers and prospective purchasers that certain numbers entitle the purchasers thereof to said small bars of candy; that certain other numbers entitle the purchasers thereof to said medium size bars of candy; and that the last number in each section entitles the purchaser thereof to one of said large bars of candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of said bars of candy or the last number in one of said sections, receives nothing for his money other than the privilege of punching a number from said board. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated or removed from said board. The small bars of candy and the medium size bars of candy are 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 small boxes of candy and a package containing a 5-pound box of candy and a pillow, together with a device commonly called a punchboard. Purchasers punching numbers 1 to 10 pay in cents the amount of the numbers punched from said board and for all numbers above 10 the purchasers thereof pay 10 cents. The board also contains a master seal under which is concealed a number corresponding to one of the numbers on said board. The said board bears statements or legends informing purchasers and prospective purchasers that certain numbers entitle the purchasers thereof to a small box of candy, that the number corresponding to the number under the master seal entitles the purchaser thereof to said package containing a 5-pound box of candy and a pillow. The said numbers on said board are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated or removed from said board. The number under the master seal is effectively concealed from purchasers and prospective purchasers until all of said numbers have been separated or removed from said board. Purchasers who do not qualify by obtaining

a number calling for one of the small boxes of candy or the number corresponding to the number under the master seal, receive nothing for their money other than the privilege of punching a number from said board. The said small boxes of candy and the package containing a 5-pound box of candy and a pillow are worth more than the amounts to be paid for punches from said boards but are received by the purchasers thereof for the amounts called for by the numbers punched from the board. The said small box of candy and the package containing a 5-pound box of candy and a pillow are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various assortments of its candy and nut confections and furnishes various punchboards and push cards for use in the sale and distribution of such candy and nut confections by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method employed in connection with each of said punchboards and push cards is substantially the same as the sales plan or method hereinabove described and varies only in detail.

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

PAR. 4. The sale of said products to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a box or a bar of candy or nut confections at a price greatly below the normal retail price thereof. The use by respondent of said method in the sale of candy and nut confections, and the sale of said candy and nut confections by and through the use thereof and by the aid of said method, is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws. The use by respondent of said method has a tendency unduly to hinder competition or create a monopoly in this. to wit: That the use thereof has a tendency and capacity to exclude from the candy and nut confections trades competitors who do not adopt and use the same method or an equivalent element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy and nut confections in competition with the respondent as above alleged, are unwilling to offer for sale or

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

PAR. 5. Many dealers in and ultimate purchasers of candy and nut confections are attracted by respondent's method and manner of packing said candy and nut confections, and by the element of chance involved in the sale thereof, in the manner above described, and are thereby induced to purchase said candy and nut confections so packed and sold by respondent in preference to candy and nut confections offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent has the tendency and capacity, because of said game of chance, to unfairly divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method, to exclude from the candy and nut confections trades all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful, to lessen competition in said candy and nut confections trades, to create a monopoly of said candy and nut confections trades in respondent and such other distributors of candy and nut confections as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy and nut confections trades. The use of said method by respondent has a tendency and capacity to eliminate from said trades all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said methods or an equivalent method.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 14, 1938, issued and thereafter served its complaint in this proceeding upon respondent Jacobs 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Edward W. Thomerson and D. C. Daniel, attorneys for the Commission (respondent having offered no testimony or other evidence in opposition to the allegations of said complaint), before Randolph Preston and Arthur F. Thomas, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, testimony and other evidence, brief of counsel for the Commission (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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Responent Jacobs Candy Co., Inc., is a corporation organized and doing business under the laws of the State of Louisiana with its principal office and place of business located at 827 Carondelet Street, New Orleans, La. Respondent is now, and for about 4 years last past, has been engaged in the manufacture of candy and nut confections and in the sale and distribution thereof to dealers located in various States of the United States and the District of Columbia. Respondent causes, and has caused, its said products, when sold, to be shipped or transported from its place of business aforesaid to purchasers thereof in various States of the United States and the District of Columbia at their various respective points of location. There is now, and has been, for about 4 years last past a course of trade by respondent in such merchandise in commerce between and among various States of the United States and in the District of Columbia. In the course and conduct of its business respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and nut confections in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid respondent sells and distributes, and has sold and distributed, to many dealers in various States of the United States. certain assortments of candy and nut confections so packed and assembled as to involve the

use of a game of chance, gift enterprise, or lottery scheme, when sold or distributed to the consumers thereof. One assortment of candy so sold by the respondent consisted of a number of small bars of candy, a number of medium sized bars of candy and a number of large bars of candy, together with a device called a punchboard. Said board is divided into four sections. Sales are for 5 cents each. The said board bears statements or legends at the top thereof informing purchasers or prospective purchasers that certain numbers entitle the purchasers to said small bars of candy; that certain other numbers entitle the purchasers to medium-sized bars of candy, and that the last number in each section entitles the purchasers to one of said large bars of candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of said bars of candy or the last number in one of said sections of said board, receives nothing for his money. The numbers are entirely and effectively concealed from purchasers and prospective purchasers until and after they have been separated or removed from said board. The said small bars of candy and the medium-sized bars of candy are thus sold and distributed to the purchasing public wholly by lot or chance.

Another of respondent's assortments of candy has been sold and distributed to a substantial part of the purchasing public as follows:

This consists of a number of small boxes of candy and a package containing a 5-pound box of candy and a pillow, together with a device commonly called a punchboard. Purchasers punching numbers 1 to 10 thereon pay in cents the amount of the respective numbers punched upon said board and for all numbers above 10 the purchasers thereof pay 10 cents each. The board also contains a master seal under which is concealed a number corresponding to one of the numbers on said board. The said boards bear statements or legends informing purchasers and prospective purchasers that certain numbers entitle the purchasers thereof to a small box of candy, that the number corresponding to the number under the master seal entitles the purchasers thereof to said package containing a 5-pound box of candy and a pillow. The said numbers on said board are effectively concealed from purchasers and prospective purchasers until punched from said board. The number under the master seal is effectively concealed from purchasers and prospective purchasers until all of said numbers have been separated or removed from said board. Purchasers who do not qualify by obtaining a number calling for one of the small boxes of candy or the number corresponding to the number under the master seal, receive nothing for their money. The said boxes of candy and the package containing a 5-pound box

of candy and a pillow are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various other assortments but the sales plans in connection therewith are similar to the ones hereinabove described, varying only in detail.

PAR. 3. The Commission finds that retail dealers who purchase respondent's said assortments, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plans or methods hereinabove described. Respondent thus supplies to and places in the hands of others, a means of conducting lotteries in the sale of its products in accordance with the sales plans or methods hereinabove described. 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 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 hereinbefore constitutes a game of chance or 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 various States of the United States but who are unwilling to use said sales plans or methods in the sale of their said merchandise or any other sales plan or method involving a game of chance or the sale of a chance to win something thereby, or any other 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 plans or methods employed by respondent, as herein described, many persons have been induced to buy and sell respondent's merchandise in preference to the merchandise offered for sale and sold by its said competitors.

PAR. 5. The Commission finds that as a result of the use of said sales plans or methods, as above described, trade is being, and has been, unfairly diverted to respondent from its said competitors and substantial injury is being, and has been, done to said competitors by respondent 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, testimony and other evidence taken before Randolph Preston and Arthur F. Thomas, examiners 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 of counsel for the Commission (counsel for 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 respondent, Jacobs 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 and nut confections, or any other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing any merchandise so packed and assembled that sales of said 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. 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

ALLEN B. WRISLEY COMPANY ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3021. Order, Feb. 10, 1941

Modified order, pursuant to provisions of section 5 (l) of Federal Trade Commission Act, and in accordance with decree below set forth, in proceeding in question, in which original order issued on April 6, 1939, 28 F. T. C. 1368, 1375, and in which Circuit Court of Appeals for Seventh Circuit on June 12, 1940, in *Allen B. Wrisley Co. et al* v. *Federal Trade Commission*, 113 F. (2d) 437, 31 F. T. C. 1815, rendered its decision setting aside Commission's order, with permission to Commission to present order consistent with such decision, and on July 18, 1940, issued its decree modifying said Commission order and directed Commission to modify its said order to cease and desist in accordance therewith—

Requiring respondents, their officers, etc., in connection with offer, etc., in interstate commerce or District of Columbia, of soap, to forthwith cease and desist from representing, in any manner, that any soap which does not contain olive oil to exclusion of all other oils is an olive oil soap, and from using brand names or labels "Olivilo," "Royal Olive Oil Pure," and other brand names or labels as below set forth, or others of similar import or meaning, or word "Olive" or letters "oliv," equivalent term to describe, etc., soap, oil content of which is not wholly olive oil, and subject to explanatory qualification, in case of soap composed in part thereof, as below set forth, and excepting from prohibition of order trade names or labels "Palm and Olive Oil Soap," "Palm and Olive Soap," and "Oliv-Palm Complexion Soap."

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on April 6, 1939, the Commission made its findings as to the facts herein and concluded therefrom that the respondents had violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on June 12, 1940, the United States Circuit Court of Appeals for the Seventh Circuit rendered its decision setting aside the Commission's order to cease and desist with permission to the Commission to present an order consistent with such decision, and that on July 18, 1940, the aforesaid Circuit Court of Appeals issued its decree modifying the aforesaid order of the Commission and directed the Commission to modify its aforesaid 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 the said court decree:

It is ordered, That the respondents, Allen B. Wrisley Co. and Allen B. Wrisley Distributing Co., also trading under the name Regal Soap Company, 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 commerce 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."

It is further ordered, That the respondents shall within 30 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

CARL D. BATES, TRADING AS SIMMON'S CUT RATE DRUG STORE

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

Docket 4366. Complaint, Oct. 29, 1940—Decision, Feb. 10, 1941

Where an individual engaged in sale and distribution of various medicinal preparations, including drug preparation known as "Mrs. Bee Femo Caps" and also as "Femo Caps" and "Bee Caps," to purchasers in various 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 by various other means in commerce—

(*a*) Represented, directly and by implication, that his said preparation constituted a competent and effective treatment for delayed, unnatural, and suppressed menstruation and that it was safe and harmless, facts being said preparation was not a competent or effective treatment for such conditions and was not safe or harmless, in that it contained drugs ergot, oil of savin, aloin, and oil of tansy 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 such use of said preparation might cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in case of pregnancy might cause uterine infection and blood poisoning, and such use of said preparation might also produce severe circulatory conditions, often with poisonous effect upon human system and tending to cause abortion in some instances, and might result in severe toxic conditions, in some instances producing gangrenous condition of lower limbs, resulting either in possible loss of limbs or in other serious and irreparable injury to health; and

(*b*) Failed to reveal, in said advertisements, facts material in the light of representations contained therein, and that use of said preparation under conditions prescribed in such advertisements or under such conditions as are customary or usual, might cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs and, in case of pregnancy, might cause uterine infection and blood poisoning;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that his preparation possessed properties which it did not in fact possess, and that it was safe and harmless when such was not the fact, and with result, as consequence of such erroneous and mistaken belief, of inducing such public to purchase substantial quantities 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.

Mr. Samuel R. Levy, of Canandaigua, 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 Carl D. Bates, an individual, trading as Simmon's Cut Rate Drug Store, 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 Carl D. Bates, an individual trading as Simmon's Cut Rate Drug Store, with his principal place of business at 84 Main Street, Canandiagua, Ontario County, N. Y., 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 known as "Mrs. Bee Femo Caps," and also as "Femo Caps" and as "Bee Caps."

PAR. 2. Respondent causes said preparation, when sold, to be transported from his 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 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 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 his 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, 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

(Facsimile package of Mrs. Bee Femo Caps)

HARMLESS PRESCRIPTION

DON'T BE DISCOURAGED. Don't be alarmed over delayed unnatural suppressed menstruation. New discovery, Mrs. Bee Femo Caps, the fast acting, safe aid to women. Acts without discomfort or inconvenience. Ask today for Mrs. Bee Femo Caps.

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents and has represented, directly and by implication, that his said preparation constitutes a competent and effective treatment for delayed, unnatural, and suppressed menstruation and that said preparation is safe and harmless.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a competent or effective treatment for delayed, unnatural, or suppressed menstruation. Moreover, said preparation is not safe or harmless, as it contains the drugs ergot, oil of savin, aloin, and oil of tansy 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, 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 and 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. The advertisements disseminated by the respondent constitute false advertisements for the further 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 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.

PAR. 7. The use by the respondent of the aforesaid false advertisements with respect to his said preparation, disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's preparation possesses properties which it does not in fact possess, and that said preparation is safe and harmless, when such is not the fact. 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 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 October 29, 1940, issued, and on October 30, 1940, served, its complaint in this proceeding upon respondent, Carl D. Bates, individually and trading as Simmon's Cut Rate Drug Store, 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 and service of said complaint and 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Carl D. Bates, an individual trading as Simmon's Cut Rate Drug Store, with his principal place of business at

84 Main Street, Canandaigua, Ontario County, N. Y., 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 known as "Mrs. Bee Femo Caps," and also as "Femo Caps" and as "Bee Caps."

PAR. 2. Respondent causes said preparation, when sold, to be transported from his 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 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 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 his 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, 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

(Facsimile package of Mrs. Bee Femo Caps)

HARMLESS PRESCRIPTION

DON'T BE DISCOURAGED. Don't be alarmed over delayed unnatural suppressed menstruation. New discovery, Mrs. Bee Femo Caps, the fast acting, safe aid to women. Acts without discomfort or inconvenience. Ask today for Mrs. Bee Femo Caps.

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents and has represented, directly and by implication, that his said preparation constitutes a competent and effective treatment for delayed, unnatural, and suppressed menstruation and that said preparation is safe and harmless.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a competent or effective treatment for delayed, unnatural, or suppressed menstruation. Moreover, said preparation is not safe or harmless, as it contains the drugs ergot, oil of savin, aloin, and oil of tansy 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, 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 and 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. The advertisements disseminated by the respondent constitute false advertisements for the further 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 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.

PAR. 7. The use by the respondent of the aforesaid false advertisements with respect to his said preparation, disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's preparation possesses properties which it does not in fact possess, and that said preparation is safe and harmless, when such is not the fact. 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 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, Carl D. Bates, individually and trading as Simmon's Cut Rate Drug Store, 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, or distribution of his medicinal preparation known as "Mrs. Bee Femo Caps," and as "Femo Caps," and "Bee Caps," or any preparation of substantially similar composition or possessing 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 advertisement represents, directly or through inference, that said preparation constitutes a competent or effective treatment for delayed, unnatural, or suppressed 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 com-

merce 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 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

B. M. BENNETT, TRADING AS EMPIRE STATE 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 4400. Complaint, Dec. 5, 1940—Decision, Feb. 10, 1941

Where an individual engaged in manufacture of candy and in interstate sale and distribution of various 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 bars of candy, together with two-section push card, for use in sale and distribution of said bars, all of which had retail value greater than 1 cent, under plan in accordance with which purchaser paid 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents, in accordance with legend or figure revealed and secured by disk punched and selected, and purchaser of last punch in each section received two bars free, and (2) various assortments involving lot or chance feature and sales plans or methods similar to that above described, from which they varied in detail only—

Sold such assortments and cards to dealers and retailers, by whom, as direct or indirect purchasers thereof, they were exposed and sold to purchasing public in accordance with aforesaid sales plans or methods, 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 sale of his products, in accordance with said 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 make and sell candy and who are unwilling to offer or sell their products so packed and assembled as above set forth, 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 tendency and capacity to induce purchasers of his said candy to purchase same in preference to that offered and sold by his competitors, and with result that many dealers in and ultimate consumers of candy were attracted by said method and manner of packing same and by element of chance involved in sale thereof, as above set forth, and were thereby induced to purchase such candy, thus 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, through use of said methods and because of said game of chance, to unfairly divert trade to him from his competitors who do not use such methods, exclude from candy trade all competitors who are unwilling to and do not use same or equivalent methods as unlawful, lessen competition therein, and create monopoly thereof in him 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 trade in

question all actual, and 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. J. W. Brookfield, Jr., for the Commission.

Erwin & Nix, of Athens, 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 B. M. Bennett, individually and trading under the name of Empire State 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, B. M. Bennett, is an individual doing business under the trade name of Empire State Candy Co., with his principal office and place of business located at 883 College Avenue, Athens, Ga. 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 the said candy when sold to be shipped or transported from his aforesaid place of business in the State of Georgia to purchasers thereof at their respective points of location in various States of the United States other than the State of Georgia and in the District of Columbia. 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 of 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 discs with the word "push" appearing on the face of each of said discs and printed within each of said disks is either 1, 2, 3, 4, or 5 cents. The push card is divided into two sections. Each purchaser is entitled to push 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, and the purchaser of the last punch on each section receives two bars of candy free. All of said bars have a retail value greater 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 element 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 December 5, 1940, issued and on December 6, 1940, served its complaint in this proceeding upon respondent, B. M. Bennett, individually and trading under the name of Empire State 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 December 27, 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 upon 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, B. M. Bennett, is an individual doing business under the trade name of Empire State Candy Co., with his principal office and place of business located at 883 College Avenue, Athens, Ga. 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 the said candy when sold to be shipped or transported from his aforesaid place of business in the State of Georgia to purchasers thereof at their respective points of location in various States of the United States other than the State of Georgia and in the District of Columbia. 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, 2, 3, 4, or 5 cents. The push card is divided into two sections. Each purchaser is entitled to push 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, and the purchaser of the last punch on each section receives two bars of candy free. All of said bars have a retail value greater 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 found 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 respondents has the tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use 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 respondent, B. M. Bennett, individually and trading as Empire State Candy Co., or trading under any other name or names, his respresentatives, 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 mer-

chandise 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 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 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.

(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

PAUL BOTWIN AND EAULA LOUISE BOTWIN, DOING BUSINESS AS EAULA 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 3249. Complaint, Oct. 21, 1937—Decision, Feb. 11, 1941

Where two partners engaged in sale and distribution of candy and other merchandise to operators of and concessionaires with moving picture and burlesque theatres and tent shows, and to other persons at different points in various States, and including, in the course and conduct of their said business, certain assortments which consisted of number of packages or boxes of candy, each of which contained another article of merchandise or prize of varying value, and in the case of some of such prizes, having normal retail values in excess of the retail prices of the packages or boxes in question, prices of which were uniform and not dependent upon cost of merchandise or prize contained or to be contained therein, as case might be, and ascertainment of which was impossible for prospective purchaser until after package in question had been purchased and contents removed therefrom—

Sold and distributed such packages or boxes of candy, containing articles of merchandise to be secured as prizes, as aforesaid, directly to consuming public at points in other States through partner member to whom same were shipped for such sale, and through and to retailers by whom said assortments were resold to purchasing public in accordance with aforesaid sales plan or method, which constituted game of chance or sale of a chance to procure article of merchandise at price 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 and distribution of their merchandise in accordance with such sales plan or method, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with others who sell and distribute like or similar merchandise in commerce among the various States, but who are unwilling to use said or any other sales plan or method involving game of chance or sale of a chance to win something thereby, or any other sales plan or method which is contrary to public policy, and refrain therefrom;

With the result that many persons, because of said element of chance involved in said sales plan or method, were induced to buy and sell their said merchandise in preference to that offered and sold by said competitors, and with consequence, through use of said sales plan or method, of unfairly diverting substantial trade to them from their said 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.

Before *Mr. E. J. Hornibrook*, *Mr. Miles J. Furnas*, and *Mr. Randolph Preston*, trial examiners.

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

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Paul Botwin and Eaula Louise Botwin, individually and as copartners doing business under the trade name and style of Eaula Candy Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Paul Botwin and Eaula Louise Botwin, are individuals doing business as a copartnership under the trade name and style of Eaula Candy Co., with their principal office and place of business located at 1203 Calhoun Street, Columbia, S. C. They are now, and for some time last past have been, engaged in the sale and distribution of candy and other merchandise to operators of and concessionnaires with moving picture and burlesque theatres and tent shows, medicine shows, and repertoire companies, located at points in the various States of the United States. Respondents also sell their merchandise direct to the consuming public in theatres located in several States of the United States. They cause their said products when sold to be transported from their principal place of business in the city of Columbia, State of South Carolina, to purchasers thereof in South Carolina and in other States of the United States at their respective places of business. There is now, and has been for some time last past, a course of trade and commerce by said respondents in such candy and other merchandise between and among the States of the United States. In the course and conduct of said business, respondents are in competition with other partnerships and with corporations and individuals engaged in the sale and distribution of candy or assortments of candy and other merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to operators of and concessionnaires with moving picture and burlesque theatres,

and medicine shows, tent shows, and repertoire companies, assortments of candy and other merchandise 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 composed of a number of packages containing pieces of candy and another article of merchandise. The said packages of candy each have approximately the same number of pieces of candy therein, but the other articles of merchandise contained in said packages are of varying value. The said packages are identical in appearance, and purchasers and prospective purchasers cannot ascertain what the other article of merchandise contained therein is or the value thereof until after a purchase has been made and the package broken open. The sale of the said packages of candy and other articles of merchandise in the manner just above described thus constitutes the operation of a lottery scheme, a game of chance, or a gift enterprise.

PAR. 3. The customers of respondents resell said assortments to the consuming public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth.

Respondents also have what is commonly referred to as the candy concession in various theatres in several States of the United States, and offer for sale and sell their said merchandise in accordance with the above described sales plan direct to the consuming public in such theatres; and respondents' merchandise is shipped or transported from their principal place of business to such theatres at their various points of location for resale to the consuming public.

PAR. 4. The sale of candy and other merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure packages of candy and other articles of merchandise of varying value. The use by respondents of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondents of said method has the tendency unduly to hinder competition or to create monoply 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 cor-

porations who sell and distribute candy in competition with the respondents, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondents' said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondents in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade and to tend to create a monopoly of said candy trade in respondents and in such other distributors of candy as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondents has the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use the said method or an equivalent method.

PAR. 6. The aforementioned method, acts and practices of respondents are all to the prejudice of the public and of respondents' competitors, as hereinabove alleged. Said method, acts and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, 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 21st day of October 1937 issued and thereafter served its complaint in this proceeding upon respondents Paul Botwin and Eaula Louise Botwin, individually and as copartners doing business under the trade name and style of Eaula Candy 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 introduced by attorneys for the Commission (respondents having offered no proof in opposition to the allegations of the complaint) before examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, brief in support of the complaint (respondents having filed no brief in opposition to the complaint 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Paul Botwin and Eaula Louise Botwin are individuals who have been, and are, doing business under the trade name and style of Eaula Candy Co. with their principal office and place of business located in Columbia, S. C. They are now, and for more than 5 years last past have been, engaged in the sale and distribution of candy and other merchandise to operators of, and concessionnaires with, moving picture and burlesque theatres and tent shows and to other persons located at different points in various States of the United States.

PAR. 2. Respondents cause their said products, when sold, to be transported from their principal place of business in Columbia, S. C., to purchasers thereof at their said respective places of business in various States of the United States other than the State of South Carolina. There is now, and has been for more than 5 years last past, a course of trade by respondents in such candy and other merchandise in commerce between and among various States of the United States. In the course and conduct of said business respondents are in competition with other partnerships, corporations, and individuals engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business respondents have sold and distributed assortments of candy known as "Dixie Dainties" and "Carolina Candies." These assortments consists of a

number of packages or boxes of candy each of which also contains another article of merchandise or prize which other articles of merchandise vary in value. The candy and the said other articles of merchandise to be used and inserted in the candy boxes as such prizes were sometimes sold and shipped separately by respondents to the purchasers thereof and respondents, in some instances, sold prizes to be given in addition to the prizes contained in said packages or boxes of candy. The retail prices of respondents' prize packages are not dependent upon the cost of the merchandise or prizes to be contained in said packages. The "Dixie Dainties" package retails for 10 cents each but the said individual packages contain prizes of different values. Some of said prizes have normal retail values in excess of 10 cents. It was, and is, impossible for prospective purchasers to ascertain what additional article of merchandise or prize is contained in any of said packages of respondents until and after same has been purchased and the contents thereof removed therefrom. The said prizes are thus distributed to the purchasers thereof wholly by lot or chance. In some instances, the respondents have caused the assortments of candy containing other articles of merchandise as prizes as hereinabove described to be shipped or transported to respondent Paul Botwin at points in States other than the State of South Carolina and thereafter said candy so shipped was personally sold by said Paul Botwin to members of the consuming public. Other sales of said prize packages were made by respondents to dealers located in States other than the State of South Carolina; said dealers thereafter sold same to the consuming public. Such merchandise was always shipped to said dealers from respondents' place of business in Columbia, S. C.

PAR. 4. Retail dealers to whom respondents sell and distribute and have sold and distributed their said assortments of merchandise, resell and have resold the same to the purchasing public in accordance with the aforesaid 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 and method as hereinabove described. The use by respondents of said sales plan or method in the sale and distribution of their said assortments of merchandise and the sale of said assortments 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. 5. The Commission finds that the sale of said merchandise in the manner described hereinbefore constitutes a game of chance or

sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Respondents have competitors who sell and distribute like or similar merchandise in commerce between and among various States of the United States but who are unwilling to use said sales plan or method in the sale of their said merchandise or any other sales plan or method involving a game of chance or the sale of a chance to win something thereby, or any other 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 respondents as herein described many persons have been induced to buy and sell respondents' merchandise in preference to the merchandise offered for sale and sold by their said competitors.

PAR. 6. The Commission finds that as a result of the use of said sales plan or method described, substantial 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.

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 taken before examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondents having offered no evidence in opposition thereto), brief of counsel for the Commission (respondents having filed no brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Paul Botwin and Eaula Louise Botwin, individually and doing business under the name of Eaula Candy Co., or under any other name or names, their representatives, agents, and employees, directly or through any corporate or other

device, in connection with the offering for sale, sale and distribution of 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 thereof 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 individual packages or boxes of candy, together with other articles of merchandise of varying values, or separately, which said other articles of merchandise are to be distributed or may be distributed by means of a game of chance, gift enterprise, or lottery scheme to the members of the public who purchase said individual packages or boxes of candy.

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 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

YORK CONE COMPANY

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

Docket 3801. Complaint, Sept. 13, 1939—Decision, Feb. 11, 1941

Where a corporation engaged in manufacture of candy and in interstate sale and distribution of certain assortments thereof, together with push cards, including its "Hy-Timer" assortment composed of number of small pieces of candy of uniform size and shape, together with larger bars or pieces and peanut butter sandwiches and 160-disk two-section push card for use in sale and distribution of said products under a plan, and in accordance with said card's explanatory legend, by which purchaser received, for penny paid, one of the small pieces or larger bar or peanut butter sandwich, in accordance with success or failure in securing one of lucky numbers set out in card's legend, and purchaser of last punch in each of said two sections received, without additional cost, tray of malted milk candy—

Sold such assortments 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, under which fact as to whether purchaser received one of small pieces of uniform size and shape or larger bar, piece, or tray of candy, or peanut butter sandwich, was determined wholly by lot or chance, and involving game of chance or sale of a chance whereby purchaser might procure bars, pieces or trays of candy or peanut butter sandwiches at price which was much less than normal retail price thereof, and thereby supplied to and placed in the hands of others means by which games of chance, gift enterprises, or lottery schemes were conducted, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who sell like and similar products between and among the various States, and who refrain from using any method involving game of chance or contrary to public policy;

With the result that use of such method by it, because of said game of chance, unfairly diverted trade in commerce to it from its said competitors who do not use same or equivalent methods; to substantial injury of said 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* and *Mr. Randolph Preston*, trial examiners.

Mr. Gerard A. Rault, *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 York Cone Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, York Cone Co., is a corporation organized and doing business under the laws of the State of Pennsylvania, with its office and principal place of business located at 615–623 South Pine Street, in the city of York, Pa. Respondent is now and for some time last past has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products when sold to be transported from its principal place of business in the city of York, Pa., 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 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 42 bars of candy, 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 cents, 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 bars of candy are thus sold and distributed to the purchasing and consuming public 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 and plan hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy at a price 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 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, 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 the 13th day of September 1939, issued its complaint in the above-entitled proceeding and caused same to be served upon the respondent, York Cone 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 the 30th day of September 1939, the respondent filed its answer. 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 Gerard A. Rault, D. C. Daniel, and L. P. Allen, Jr., attorneys for the Commission, before Miles J. Furnas and Randolph Preston, examiners of the Commission theretofore duly designated by it, no evidence being offered by the respondent, and the said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, 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, York Cone Co., is a corporation organized and doing business under the laws of the State of Pennsylvania, with its office and principal place of business located at 615–623 South Pine Street, in the city of York, Pa. Respondent is now and for

some time last past has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in 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 original place of business in the city of York, Pa., to purchasers thereof, at their respective points of location, in various other States of the United States and in the District of Columbia. There is now and has been for some time last past a course of trade by respondent in such candy in commerce between and among various States of the United States and in the District of Columbia. In the course and conduct of its said business respondent 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 various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business prior to March 20, 1939, the respondent sold to wholesale dealers, jobbers, and retail dealers various assortments of candy with a device commonly known as a push card included therein. One of such assortments was known as "Hy-Timer" and consisted of a number of small pieces of candy of uniform size and shape, together with larger bars or pieces of candy and peanut butter sandwiches. Accompanying this assortment was a push card containing 160 partially perforated disks with numbers concealed therein. At the top of this push card was a legend or instructions setting forth various numbers which entitled purchasers punching the same to receive one of the aforesaid bars or pieces of candy or one of the peanut butter sandwiches. Purchasers not pushing one of the lucky numbers set-out in the legend received one of the aforesaid smaller pieces of candy of uniform size and shape. The numbers within the discs were concealed from purchasers until a selection had been made and the disc pushed or separated from the board. Sales were 1 cent each and the purchasers punching one of the numbers set out in the legend calling for a larger bar or piece of candy or a peanut butter sandwich received the same for the price of 1 cent. The push card was also divided into two sections and the purchaser of the last punch in each of these sections received without additional cost a tray of malted milk candy. The larger bars, pieces, or trays of candy and the peanut butter sandwiches above mentioned are of a greater value than the smaller pieces of candy of uniform size and shape. The fact as to whether a purchaser received one of the small pieces of candy of uniform size and shape or a larger bar,

piece, or tray of candy or a peanut butter sandwich was thus determined wholly by lot or chance.

PAR. 3. The Commission finds that the respondent sold various assortments of candy along with push cards to wholesale dealers, jobbers, and retail dealers and that retail dealers who, either directly or indirectly, purchased such assortments sold the same to the purchasing public in accordance with the sales plan described in paragraph 2 hereof. The Commission further finds that the respondent, by furnishing candy and push cards as above described thereby supplied to and placed in the hands of others the means by which games of chance, gift enterprises, or lottery schemes were conducted. The Commission further finds that the use by respondent of such a method in the sale and distribution of its candy and the distribution of candy by and through the use thereof and by the aid of such a 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 Commission further finds that the sale of candy to the consuming public by the method above described involves a game of chance or the sale of a chance whereby the purchaser thereof may procure bars, pieces or trays of candy or peanut butter sandwiches at a price which is much less than the normal retail price thereof; that many persons, firms, and corporations sell candy in commerce between and among various States of the United States and in the District of Columbia like and similar to that sold by respondent and such competitors refrain from using any method involving a game of chance or any method contrary to public policy; that 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 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 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, the answer of respondent, testimony, and other evidence taken before Miles J. Furnas and Randolph Preston, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint, no evidence being offered by the respondent, briefs filed herein, 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, York Cone 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. Supplying to or placing in the hands of others candy or any 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 public.

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 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

CHARLES T. PIKE, ELBERT C. PIKE AND ERNEST C. PIKE, TRADING AS MIDDLE WEST SUPPLY COMPANY AND THE BEST GARDENS

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

Docket 3996. Complaint, Jan. 23, 1940—Decision, Feb. 19, 1941

Where three individuals engaged, under two separate trade names, in interstate offer and sale of face powder and flower seeds of various kinds, in substantial competition with others engaged in offer and sale of said products in commerce, as aforesaid, and who do not make offers of so-called "free" goods or misrepresent prices of goods to induce their purchase;

In selling their said products under a plan of sending, through the mails, penny post cards making certain offers to addressee and holding out, or purporting to hold out, additional inducements to recipient in consideration of his sending in number of post cards addressed to friends or acquaintances, which cards were made use of by them for the further sending to such addressees of other similar offers, so as thereby to establish an endless chain of prospective customers for their merchandise—

(*a*) Represented, under trade name "Middle West Supply Company," in offers thus sent to prospective purchasers through means aforesaid, that they were offering free of charge a box of face powder of represented value of $1 as an introductory or special offer to introduce new brand of such powder if customer would remit sum of 10 cents to cover cost of postage, packaging, and handling, and send in also to them six postal cards addressed to friends who made use of such product, facts being, in large number of cases, no powder whatever was sent to those complying with said offer and sending amount thus called for, powder, in those instances in which sent, was not reasonably worth $1 or more than 10 cents paid by customer, but cost thereof to said individuals was much less than said amount and said product was not "free" nor delivered, furnished, or supplied free of charge, and so-called offers were not special, introductory, or unusual, but customary methods employed by them in regular course of their business; and

(*b*) Represented further, in offers made on post cards by them as above described, that to customers mailing in their dime and the six addressed postal cards within a 10-day period, they would send an additional premium or "promptness prize," represented as consisting, as case might be, of manicure sets, plush table covers, or similar merchandise, facts being, in cases in which face powder was sent at all, as hereinbefore set forth, and customer was entitled to such "promptness prize," they did not send same with powder, but required additional payment of 24 cents;

(*c*) Represented, under trade name "The Best Gardens," in offer and sale of flower seeds under plan above described, on post cards sent to those whose names they had secured as above described, that they had a wonderful premium offer to send recipient "free," and stated that they would send "100

Gladioli (Ruffled Varieties) 25 'Oriental Lilies' (also a wonderful house plant) and 5 full size packets of Flower Seeds for spring planting," and that if recipient would "just send us 6 postal cards each addressed to a flower lover, with a few extra names of flower lovers written on paper, together with a dime for postage, packing, and handling, this collection will be sent to you FREE," facts being in large number of cases no flower seeds were sent to customer upon receipt of dime called for, and in those instances in which they actually were sent they were worthless hulls that would not grow, it was not their practice to furnish free of charge any gladioli or oriental lilies, or any other bulb plants or flowers, flower seeds furnished by them were, as aforesaid, worthless and unfit for use and were not furnished free of charge, but cost to them of such seeds, purportedly given free, was included in the 10 cents required to cover purported mailing, packing and handling costs; and

(*d*) Represented further purported "free" offer on cards sent as aforesaid, through statement reading "P. S. Sending us these names within 10 days enables you to receive FREE, a $1.00 Silk Crushed Plush Table Cover," facts being in those cases in which flower seeds were sent at all, as aforesaid indicated, and customer was entitled to the "promptness prize" for sending in the 6 addressed postal cards within prescribed 10-day period, they did not send such prize as agreed, but instead another card requiring payment of 24 cents additional before so-called "promptness prize" would be sent;

With the result that said so-called "free" offers, advertised and distributed to public as above set forth, misled and deceived public into acceptance thereof and into purchase of their merchandise by paying them full value thereof in belief that such payment was merely to cover cost of mailing and packaging products in question, and with consequence that their use of such false and fraudulent representations and sales methods misled and deceived substantial portion of purchasing public into purchase of considerable quantities of their said merchandise, and trade, as consequence, was thereby diverted unfairly to them from competitors who do not misrepresent quality or value of their products or terms and conditions under which sold; 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*, trial examiner.

Mr. S. Brogdyne Teu, II and *Mr. Merle P. Lyon* for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Charles T. Pike, Elbert C. Pike, and Ernest C. Pike, individuals doing business under the trade names "Middle West Supply Company" and "The Best Gardens," hereinafter referred to as the 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, Charles T. Pike, Elbert C. Pike, and Ernest C. Pike, are individuals doing business under the trade names "Middle West Supply Company" and "The Best Gardens," having their principal office and place of business at 310 Prairie Street in the city of St. Charles, in the State of Illinois. Respondents are now, and for several years last past have been, engaged in the business of offering for sale and selling face powder and flower seeds of various kinds in commerce among and between the various States of the United States. Said respondents cause said face powder and flower seeds, when sold, to be transported from their office and 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. There is now, and has been at all times mentioned herein, a course of trade in said face powder and flower seeds so offered for sale and sold by respondents, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other individuals, and with firms, partnerships, and corporations also engaged in offering for sale and selling face powder and flower seeds 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 of offering for sale and selling face powder, respondents, under the trade name Middle West Supply Co., have sent through the United States mails by means of penny postal cards addressed to individuals located in various States of the United States, whose names are procured through the methods hereinafter set out, advertisements reading substantially as follows:

Dear Friend: This card was addressed to you by your friend so that you can also receive a $1.00 box of our new "Velve-Ritz" Face Powder FREE. Being in the wholesale business we are introducing this New powder for the first time and we want you to tell us what you think of this powder. We have made this powder MOISTURE PROOF and does not clog the pores, and we are anxious to have you test it for us. Just tell us what shade you use and enclose 6 postal cards each addressed to friends of yours who use powder, with a few extra names of friends written on paper, together with a dime for postage, packing and handling this lovely $1.00 box of our New Velve-Ritz Face Powder will be sent to you FREE. Middle West Supply Co., Box 132, St. Charles, Ill. P. S. If we receive the names within 10 days, we will GIVE a lovely 4 piece Manicure set FREE.

The name of the face powder does not appear the same on all cards. Some of the other names used are "Ideal," "Vel-O-Tex," "Royal Madonna," and "Mo-V-Star," and various other gifts are offered on different cards besides the manicure set, including, among others, a silk crushed plush table cover with a represented value of $1, one-half dozen pure white linen handkerchiefs, or a jar of cold cream, all of the represented value of $1.

If the offer of respondents is accepted by the recipient of the postal card, the respondents mimeograph the same offer on the backs of the six postal cards required to be sent with each dime and mail them out to the addressees, thus establishing an endless chain of prospective customers of respondents' merchandise. In a large number of cases no face powder is sent to the customer upon receipt of the dime, and in the instances where powder is actually sent it is not reasonably worth $1 or more than the 10 cents paid by the customer.

In cases where the face powder is actually sent, and the customer is entitled to the "promptness prize" for sending in to respondents the six addressed postal cards within the specified 10-day period, the respondents do not send the "promptness prize" or gift with the powder. In lieu thereof respondents send a card in the envelope containing the powder, which card reads substantially as follows:

Premium Offer. One $1.00 silk crushed plush table cover. We thank you for your promptness in sending us the names. Kindly send us 24¢ to cover postage, packing and handling charges with your name and address written on the back of this card. Your PREMIUM will be sent to you at once. In case we are temporarily out of table covers, kindly check second choice of equal value. 1. ½ dozen pure white linen handkerchiefs. 2. Ladies' combination set, cold cream, perfume, lipstick, necklace, etc.

In a large number of cases where the recipient of this card accepts this offer and sends to respondents the 24 cents required, no premium is sent, or an alternative premium is sent. In all cases, however, the premium sent does not have the value of $1 or a value greater than the 24 cents paid by the customer.

The face powder and free premium offer card are sent out by respondents in a manila envelope, on which appears an additional offer, which is substantially as follows:

FREE FREE

So you may become acquainted with the new "Mo-V-Star" face powder—the powder that needs no Cold Cream base—the powder you can carry in your vanity when out—the new marvellous powder that makes you look like a "million dollars"— we will be glad to send you a big $1.50 box absolutely FREE. Just send us the name of the firm You THINK carries the finest assortment of Cosmetics in your community and drop two dimes into this envelope to help cover postage, packing

and handling and fold to fit an envelope addressed to the Middle West Supply Co. Dept. 10, St. Charles, Illinois. (Your name and address is on this envelope) and write the Dealer's name on the back you think carries the finest assortment of Cosmetics. (Your name not divulged). If we receive this within 10 days, we will include a New Powder Puff FREE.

In a large number of cases where this offer is accepted, no powder or powder puff is sent by respondents, and in any event such face powder is not worth the sum of $1.50 or any sum in excess of the 20 cents paid by the customer.

In addition to the above offers, respondents insert another card in the envelopes in which face powder is sent, said card reading as follows:

Big Opportunity. Turn SPARE TIME into DOLLARS Addressing Postal Cards at Home. We supply everything and Pay Cash in advance. Earn Easy spare time money. Everything confidential.

When a customer responds to this offer, the respondents send him a form letter stating that they will send a supply of stamped cards to be addressed and will pay 2 cents a card for each card addressed and sent out, in addition to a 50 percent commission on every order received by respondents for the deal described on the cards sent out. In addition to the supply of cards they agree to give the customer free of charge a $1.50 Box of Face Powder. They require the customer to put up a $1 deposit to show good faith and cover the cost of materials.

In a large number of cases no cards are sent to the customer to be addressed, or in any case so few are sent that there is no opportunity for the customer to earn enough money to defray the cost of his $1 deposit, and no face powder is sent, or if sent, it is not worth the sum of $1.50 or any amount equal to the deposit paid by the customer.

PAR. 4. In truth and in fact, the products so offered by the repondents to the public as free were not and are not delivered, furnished or supplied free of charge, or without any compensation or return to the respondents, and the cost of such products purported to be given free of charge has been and is included by respondents in the price purchasers have been and are required to pay in accordance with the terms of their various so-called free offers.

The various offers have not been special or unusual, but have been and are the customary methods employed by the respondents in the regular course of their business, and are not in any sense advertising or introductory offers of newly offered merchandise. The face powder offered for sale and sold by respondents by the methods heretofore set out is not manufactured by them, but is purchased by them in bulk from wholesalers for not more than 15 cents per pound. The boxes of powder sold by respondents by the methods herein-

before set forth each contain approximately 1 ounce of powder, and are not worth more than the 10 cents paid therefor, and are not free as represented. In many instances respondents have failed and refused to send any merchandise whatsoever after full payment has been made by the customer in accordance with the terms of the offers made by respondents.

PAR. 5. In the course and conduct of their business of offering for sale and selling flower seeds, respondents, under the trade name The Best Gardens, have sent through the United States mails by means of penny postal cards addressed to individuals located in various States of the United States, whose names are procured through the same methods used in the sale of face powder as hereinbefore set forth, advertisements reading substantially as follows:

Dear Friend: As your friend addressed this card to you as a Flower Lover, we have a wonderful PREMIUM OFFER to send you FREE. Will also send you 100 Gladioli (Ruffled Varieties) 25 "Oriental Lilies" (also a wonderful house plant) and 5 full size pkts. of Flower Seeds for spring planting. Just send us 6 postal cards each addressed to a flower lover, with a few extra names of flower lovers written on paper, together with a dime for postage, packing and handling, this collection will be sent to you FREE.

The Best Gardens, Box 10, St. Charles, Ill.

P. S. Sending us these names within 10 days enables you to receive FREE, a $1.00 Silk Crushed Plush Table Cover.

If the offer of respondents is accepted by the recipient of the postal card, the respondents mimeograph the same offer on the backs of the six postal cards required to be sent with each dime and mail them out to the addressees, thus establishing an endless chain of prospective customers of respondents' merchandise. In a large number of cases no merchandise is sent to the customer upon receipt of the dime, and in the instances where seeds are actually sent, they are not as represented in the advertisement, and are not worth more than the 10 cents paid by the customer.

In cases where the flower seeds are actually sent, and the customer is entitled to the "promptness prize" for sending in to respondents the six addressed postal cards within the specified 10-day period, the respondents do not send the "promptness prize" or gift. In lieu thereof respondents send a card reading substantially as follows:

Premium Offer. One $1.00 silk crushed plush table cover. We thank you for your promptness in sending us the names. Kindly send us 24¢ to cover postage, packing and handling charges with your name and address written on the back of this card. Your PREMIUM will be sent to you at once. In case we are temporarily out of table covers, kindly check second choice of equal value. 1. ½ dozen pure white linen handkerchiefs. 2. Ladies combination set, cold cream, perfume, lipstick, necklace, etc.

In a large number of cases where the recipient of this card accepts this offer and sends to respondents the 24 cents required, no premium is sent, or an alternative premium is sent. In all cases, however, the premium sent does not have the value of $1 or a value greater than the 24 cents paid by the customer.

PAR. 6. In truth and in fact, it has not been and is not the practice of respondents to furnish free of charge, nor have they furnished free of charge, 100 gladioli or 25 "Oriental Lilies" or any gladioli or oriental lilies to persons who, in compliance with the terms and conditions of respondents' offer on their said post cards, have transmitted to respondents the required names of flower lovers and the 10 cents to cover packing and postage. The products so offered by the respondents to the public as free were not and are not delivered, furnished, or supplied free of charge, or without any compensation or return to the respondents, and the cost of such products purported to be given free of charge has been and is included by respondents in the price purchasers have been and are required to pay in accordance with the terms of their various so-called free offers.

PAR. 7. The so-called free offers of respondents advertised and distributed to the public in the manner hereinbefore set forth have had and have the capacity and tendency to mislead and deceive, and have misled and deceived, the public into acceptance of such so-called free offers and into the purchase of respondents' products by paying to respondents the full value thereof in the belief that such payment is merely to cover the cost of mailing and packing said merchandise.

The use by the respondents of the false and fraudulent representations and sales methods set forth in paragraphs 3 and 5 hereof 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 purchase of a considerable quantity of respondents' products, with the result that trade has been unfairly diverted to respondents from competitors who do not misrepresent the quality or value of their products or the terms and conditions under which they are sold. In consequence thereof, injury has been done, and is now being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts, practices, and representations of the respondents, as herein alleged, have been and are, all to the prejudice of the public and of respondents' competitors as aforesaid, 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 23, 1940, issued and subsequently served its complaint in this proceeding upon respondents, Charles T. Pike, Elbert C. Pike, and Ernest C. Pike, individually and trading as Middle West Supply Co. and The Best Gardens, 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 such complaint, testimony, and other evidence in support of the allegations of said complaint were introduced by S. Brogdyne Teu II, 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. 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 (respondents not having filed brief and oral argument not having been requested), and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondents, Charles T. Pike, Elbert C. Pike, and Ernest C. Pike, are individuals doing business under the trade names "Middle West Supply Company" and "The Best Gardens," having their principal office and place of business at 310 Prairie Street, in the city of St. Charles, in the State of Illinois. Respondents are now, and for several years last past have been, engaged in the business of offering for sale and selling face powder and flower seeds of various kinds in commerce among and between the various States of the United States. They cause said face powder and flower seeds, when sold, to be transported from their office and 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. There is now, and has been at all times mentioned herein, a course of trade in said face powder and flower seeds so offered for sale and sold by

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

PAR. 2. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other individuals and with firms, partnerships, and corporations also engaged in offering for sale and selling face powder and flower seeds in commerce among and between the various States of the United States who do not make offers of so-called "free" goods or misrepresent the price of goods to induce their purchase.

PAR. 3. In the course and conduct of their business in offering for sale and selling face powder, respondents, under the trade name Middle West Supply Co., have sent through the United States mails penny post cards offering free of charge a box of face powder of the represented value of $1 as an introductory or special offer to introduce a new brand of face powder, provided the customer remits the sum of 10 cents to cover the cost of postage, packaging and handling, and also sends in to the respondents six postal cards addressed to friends who use powder. Furthermore, an additional premium or "promptness prize" is offered by respondents to customers mailing in the dime and six addressed postal cards within a 10 day period, such premiums being represented to consist of manicure sets, plush table covers, or similar merchandise.

If the offer of respondents is accepted by the recipient of the postal card, the respondents mimeograph a similar offer on the backs of the six postal cards required to be sent with each dime and mail them out to the addressees, thus establishing an endless chain of prospective customers of respondents' merchandise. In a large number of cases no face powder is sent to the customer upon receipt of the dime, and in the instances when powder is actually sent it is not reasonably worth $1 or more than the 10 cents paid by the customer.

In cases where the face powder is sent and the customer is entitled to the "promptness prize" for sending in the six addressed postal cards within the prescribed 10-day period, the respondents do not send the "promptness prize" with the powder, but require an additional payment of 24 cents.

The United States Post Office Department has received nearly 5,000 complaints regarding the failure of respondents to live up to the offers thus made to the purchasing public. Of these complaints nearly 40 percent claimed that they had not received the merchandise for which they had remitted money, and the others complained that the merchandise was not as advertised. During the year 1937 the respondents purchased at the St. Charles, Ill.,

post office 3,100,000 postal cards, and at one time respondents mailed about 50,000 cards per days to customers throughout the United States. The face powder sold by the respondents in the manner hereinbefore set-out was purchased by them in bulk at about 14 cents a pound, and each individual box of powder contained only about 1 ounce. The containers used cost the respondents about $12 per thousand, and postage of 1½ cents was paid on each box for mailing.

PAR. 4. In truth and in fact, the face powder so offered by the respondents to the public as "free" was not and is not delivered, furnished or supplied free of charge, and the cost of such face powder to respondents has been and is much less than the 10 cents paid by the customer. The said face powder is not worth $1 or more than the 10 cents paid by the customer. Respondents' offers are not special or unusual, but are the customary methods employed by them in the regular course of their business, and are not in any sense advertising or introductory offers of newly offered merchandise.

PAR. 5. In the course and conduct of their business in offering for sale and selling flower seeds, respondents, under the trade name, The Best Gardens, have sent through the United States mails by means of penny postal cards addressed to individuals located in the various States of the United States, whose names are procured by methods similar to those used in the sale of face powder as hereinbefore set forth, advertisements reading substantially as follows:

Dear Friend: As your friend addressed this card to you as a Flower Lover, we have a wonderful PREMIUM OFFER to send you FREE. Will also send you 100 Gladioli (Ruffled Varieties) 25 "Oriental Lilies" (also a wonderful house plant) and 5 full size pkts. of Flower Seeds for spring planting. Just send us 6 postal cards each addressed to a flower lover, with a few extra names of flower lovers written on paper, together with a dime for postage, packing and handling, this collection will be sent to you FREE.

The Best Gardens, Box 10, St. Charles, Ill.

P. S. Sending us these names within 10 days enables you to receive FREE, a $1.00 Silk Crushed Plush Table Cover.

If the offer of respondents is accepted by the recipient of the postal card, the respondents mimeograph a similar offer on the backs of the six postal cards required to be sent with each dime and mail them out to the addressees, thus establishing an endless chain of prospective customers of respondents' merchandise. In a large number of cases no flower seeds are sent to the customer upon receipt of the dime, and in the instances where seeds are actually sent, they are worthless hulls that will not grow.

In cases where the flower seeds are sent, and the customer is entitled to the "promptness prize" for sending in to respondents the six addressed postal cards within the prescribed 10-day period, the respondents do not send the "promptness prize" as agreed. Instead they send another card requiring the payment of 24 cents additional before the "promptness prize" will be sent.

PAR. 6. In truth and in fact, it has not been and is not the practice of respondents to furnish free of charge, any gladioli or oriental lilies or any other bulbs, plants or flowers, and the flower seeds furnished by respondents are worthless and unfit for use, and are not furnished free of charge. The cost to respondents of such flower seeds purported to be given free of charge has been, and is, included by respondents in the 10 cents required to be paid to cover the purported cost of mailing, packaging, and handling.

PAR. 7. The so-called "free" offers of respondents advertised and distributed to the public in the manner hereinbefore set out have had and have the capacity and tendency to mislead and deceive, and have misled and deceived, the public into acceptance of such so-called free offers and into the purchase of respondents' merchandise by paying to respondents the full value thereof in the belief that such payment is merely to cover the cost of mailing and packaging said merchandise.

The use by respondents of such false and fraudulent representations and sales methods 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 purchase of a considerable quantity of respondents' merchandise, with the result that trade has been unfairly diverted to respondents from competitors who do not misrepresent the quality or value of their products or the terms and conditions under which they are sold. In consequence thereof, injury has been done, and is now being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, 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 brief of counsel for the Commission filed herein in support of the allegations of said complaint (respondents not having filed answer or brief or introduced testimony or other evidence in opposition to the allegations of the complaint, and oral argument not having been requested or 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, Charles T. Pike, Elbert C. Pike, and Ernest C. Pike, individually and trading under the names Middle West Supply Co., The Best Gardens, or any other name, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of face powder, flower seeds, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from.

1. Using the words "free," "free offer," "gift," "prize," or "premium," or any other word or words of similar import or meaning, to designate, describe or refer to any of respondents' merchandise.

2. Representing that the amount required of the purchaser of respondents' merchandise represents anything other than the full retail price of such merchandise.

3. Representing as the customary or regular prices or values of any of respondents' merchandise prices and values which are in excess of the prices at which such merchandise is regularly and customarily offered for sale and sold by respondent in the normal course of business.

4. Representing that the respondents in the sale of their merchandise are conducting a special or introductory or advertising offer.

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

CAROLINE R. MACHER AND ROBERT J. MACHER, TRADING AS MACHER WATCH & JEWELRY CO. AND AS WHOLESALE WATCH & JEWELRY CO.

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

Docket 4087. Complaint, Apr. 12, 1940—Decision, Feb. 26, 1941

Where two individuals engaged in interstate sale and distribution at retail of watches and jewelry, silverware and other merchandise—

(*a*) Falsely represented through use of words "Wholesale" and "Jobbers" in or in connection with trade names employed by them, and set forth in their catalogs, circulars, cards, and other advertising material, that they, retailers, were wholesalers or jobbers, dealt with, in preference to retailers, by a portion of purchasing public due to fact or belief that they thereby obtained wholesale or less than customary retail prices;

(*b*) Falsely represented that prices at which their merchandise was offered were wholesalers' and jobbers' prices and represented large discounts from customary retail prices, through such statements, in catalogs, circulars, cards, and other advertising material as "You save 50 and 10% from the retail value," "The buy of a lifetime at 50% discount;" fact being their prices were approximately those at which such merchandise is customarily offered at retail and represented no substantial discount or saving to the purchaser;

(*c*) Falsely represented that their business was "Over half a century old" through such statements in catalogs, circulars, cards and other advertising material as "Direct Jobber * * * for a Half Century" and "Our 56th Year," facts being it was not started until year 1930; and

(*d*) Falsely represented that certain rings offered and sold by them were set with genuine rubies and sapphires through statement "10K, yellow gold, with ruby or sapphire," when in fact such settings were merely artificial or synthetic stones which resembled the genuine;

With effect of misleading and deceiving a substantial portion of the purchasing public in regard to their business status, and as to prices, quality, and character of their merchandise, whereby purchasing public was induced to and did buy substantial quantities thereof:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Wm. T. Chantland for the Commission.

Carb, Reichman & Luria, 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 Caroline R. Macher and Robert J. Macher, individually and trading as Macher Watch & Jewelry Co., and as Wholesale Watch & Jewelry 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 Caroline R. Macher and Robert J. Macher are individuals trading as Macher Watch & Jewelry Co. and as Wholesale Watch & Jewelry Co., with their office and principal place of business located at 15 Maiden Lane, New York City, N. Y. Respondents are now and for more than 2 years last past have been engaged in the sale and distribution of watches, jewelry, silverware, electrical appliances, and other merchandise.

In the course and conduct of their business respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in their said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, and for the purpose of inducing the purchase of their said products, the respondents have made false and misleading representations with respect to their business status and with respect to the character, quality, and prices of their products, such representations being made by means of catalogs, circulars, and cards distributed among prospective purchasers, and by other means. Among and typical of such false and misleading representations are the following:

WHOLESALE WATCH & JEWELRY CO.
Successor to the Wholesale House of J. Macher

Direct Jobber of American Watches for
over half a century

30 to 50% DISCOUNT
from the manufacturers' established and
advertised RETAIL prices of WALTHAM,
ELGIN, and SWISS WATCHES

An allowance on an old watch towards the
purchase of a HAMILTON, GRUEN, and
BULOVA

The Largest Stock of Watches in the City
Diamonds, Jewelry, Etc., 50 and 10%
Silverware: Plate 33⅓ to 41%; Sterling
25 to 36% from RETAIL
Electric Household Appliances 35% from
the RETAIL Prices

Macher Watch & Jewelry Co.
Industrial Jobbers
Founded on 56 years' experience

In the catalogs and in other advertising material distributed by respondents as aforesaid there appear descriptions of numerous items offered for sale by respondents, and in connection with such items there appear certain figures purporting to represent the customary retail prices at which such articles are usually sold, such prices being designated by the respondents as "Retail" prices. These also appear in connection with such purported retail prices the prices at which repondents offer such articles for sale, which prices are much less than the purported retail prices. Among and typical of such representations are the following:

10K yellow gold (ring) with ruby or sapphire.
Gold encrusted Masonic emblem. Retail $31.00

Our Price $13.95
You save 50 & 10%

Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondents represent that they are wholesalers and jobbers, and that by reason thereof they are enabled to and do offer merchandise for sale to the purchasing public at prices which are far below the regular and customary retail prices for such merchandise; that the prices at which respondents offer their products for sale represent the wholesale or jobbers' prices of such products and represent large discounts and savings to the purchasers; that respondents' said rings are set with genuine rubies and sapphires; that respondents' business has been in operation for over half a century.

PAR. 3. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, the respondents are neither wholesalers nor jobbers but are retailers only, their sales being confined to members of the consuming public. The prices represented by respondents as the customary retail prices of their prod-

ucts are in most instances exaggerated and fictitious prices and do not represent the prices at which such products are customarily sold at retail. The prices at which respondents offer their products for sale are in no sense wholesale prices or jobbers' prices and do not represent any discount or saving to the purchaser. In truth and in fact, such prices are retail prices and are the prices at which such products are customarily offered for sale and sold by respondents in the usual and normal course of business. The settings of respondents' said rings are not genuine rubies or sapphires but are artificial or synthetic stones having little or no value. Respondents' business has not been in operation for over half a century or for any period approximating such time, such business having been started about 1930.

PAR. 4. The word "Wholesale" as used by the respondents, as a part of one of their trade names, and the word "Jobbers" as used by respondents, in connection with their trade names, constitute within themselves, false and misleading representations that respondents are wholesalers or jobbers and are prepared to offer merchandise for sale at wholesale prices.

PAR. 5. There is a marked preference on the part of a substantial portion of the purchasing public for dealing with wholesalers and jobbers of merchandise rather than with retail dealers, such preference being due to a belief that thereby lower prices and other advantages may be obtained.

PAR. 6. The use by the respondents of the aforesaid false and misleading representations 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 representations are true and into the purchase of substantial quantities of respondents' products.

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 April 12, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Caroline R. Macher and Robert J. Macher, individually, and trading as Macher Watch and Jewelry Co., and as Wholesale Watch and Jewelry 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 and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William T. Chantland, attorney for the Commission, and in opposition to the allegations of the complaint by Edward E. Reichman and Sidney A. Luria, 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 the said complaint, the answer thereto, testimony and other evidence and briefs in support of the complaint and in opposition thereto (oral argument not having been requested), and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Caroline R. Macher and Robert J. Macher, are now and since 1930 have been engaged in the sale and distribution of watches, jewelry, silverware, and other merchandise, with their place of business located at 15 Maiden Lane, New York, N. Y. Up until April 1939, respondents conducted their business under the trade name of Wholesale Watch and Jewelry Co., and since April 1939, the business has been conducted under the trade name Macher Watch and Jewelry Co.

PAR. 2. In the course and conduct of their business the respondents cause and have caused their merchandise, when sold, to be transported from their place of business in the State of New York to the purchasers of such merchandise 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 merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their merchandise, have made many statements and representations to purchasers and prospective purchasers with respect to their business status and with respect to the quality, character, and prices of their merchandise. Such statements and representations are distributed among prospective purchasers by the means of catalogs, circulars,

cards, and other advertising material. Among and typical of such representations are the following:

Wholesale Watch & Jewelry Co. Direct Jobber of American Watches for a Half Century.

Macher Watch & Jewelry Co. Industrial Jobbers.

Our 56th Year.

You Save 50 and 10% from the retail value.

The buy of a lifetime at 50% discount.

Recognized as industrial jobbers. We can sell nationally advertised merchandise at our jobbing prices.

New featured Mayfair watches presented for the first time. 40% to 50% discount from retail prices.

30% to 50% discount from the manufacturers' established and advertised retail prices on nationally known watches.

PAR. 4. Through the use of these representations and others of a similar nature the respondents represent and have represented that they are wholesalers and jobbers, and that the prices at which their merchandise is offered for sale are wholesalers' and jobbers' prices and represent large discounts from the customary retail prices of such merchandise. The respondents further represent that their business is over half a century old.

PAR. 5. The Commission finds that these representations are grossly exaggerated, false, and misleading. The respondents are in fact neither wholesalers nor jobbers but are retailers, their sales being confined to members of the consuming public. The prices of respondents' merchandise are not wholesalers' or jobbers' prices but are retail prices, being approximately the prices at which such merchandise is customarily offered for sale at retail. Respondents' prices do not represent any substantial discount or saving to the purchaser. Respondents have not been in their present business for over half a century. In fact, their said business was not started until the year 1930.

PAR. 6. The Commission further finds that in connection with certain rings offered for sale by the respondents, the following representation was made: "10K. yellow gold, with ruby or sapphire." By this means the respondents represented that the rings in question were set with genuine rubies and sapphires. The Commission finds that the settings of said rings were not in fact rubies or sapphires but were merely artificial or synthetic stones which resembled rubies and sapphires.

PAR. 7. The Commission further finds that the words "wholesale" and "jobbers" as used by the respondents as a part of and in connection with respondents' trade names constitute within themselves false

and misleading representations that respondents are wholesalers or jobbers. The Commission finds also that there is a preference on the part of a portion of the purchasing public for dealing with wholesalers of merchandise rather than with retail dealers, such preference being due either to the fact that they are obtaining wholesale prices or prices less than the customary and usual retail prices, or to their belief that they are obtaining such prices.

PAR. 8. The Commission finds that the use by the respondents of the false and misleading representations herein set forth has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public with respect to respondents' business status and with respect to the prices, quality, and character of respondents' merchandise. As a result, the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondents' merchandise.

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, 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 by William T. Chantland, counsel for the Commission, and Edward E. Reichman, 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 Caroline R. Macher and Robert J. Macher, individually and trading as Macher Watch and Jewelry Co. and as Wholesale Watch and Jewelry Co., or trading under any other name or names, their representatives, agents, and employees, directly or by implication, or through any corporate or other device, in connection with the offering for sale, sale and distribution of watches, jewelry, silverware, or any other merchandise in com-

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

1. Using the word "Wholesale" or "Jobbers" or any other word of similar import, as a part of or in connection with respondents' trade name or names, or otherwise representing that respondents are wholesalers or jobbers.

2. Representing that the prices at which respondents offer their merchandise for sale are wholesale or jobbers' prices, or that respondents' prices represent any substantial discount from the customary retail prices of such merchandise.

3. Representing that respondents' business is "over half a century" old, or that said business was started at any time prior to 1930.

4. Representing that respondents' rings or other articles of jewelry are set with rubies, sapphires or other precious stones, when in fact such settings are only artificial or synthetic stones.

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 STETSON SHOE COMPANY, INC., TRADING AS M. N. ARNOLD SHOE COMPANY

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

Docket 4050. Complaint, Mar. 6, 1940—Decision, Feb. 27, 1941

Where a corporation engaged in manufacture of shoes and in interstate sale and distribution thereof—

Falsely represented that certain of its shoes were made from the hide of an alligator, through use, in catalogs and price lists, of legend "Alligator Calf," for shoes of which there is marked preference on part of substantial portion of purchasing public over those made from other leather, when in fact products in question were not thus made, but were composed of other leather so embossed as to simulate that of alligator;

With effect of misleading and deceiving a substantial portion of purchasing public into the erroneous and mistaken belief that its said products were made of certain designated kinds of materials when such was not the fact, and thereby of inducing such public to purchase substantial quantity 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. B. G. Wilson for the Commission.

Harrington, Huxley & Smith, of Youngstown, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by the virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Stetson Shoe Co., Inc., a corporation trading as M. N. Arnold Shoe 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, The Stetson Shoe Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts with its office and principal place of business at South Weymouth, Mass. The respondent trades under the style and name of M. N. Arnold Shoe Co. The respondent is now and has been for more than 1 year last past engaged in the

manufacture, sale, and distribution of shoes. Respondent causes and has caused its said products, when sold, to be shipped or transported from its place of business in the State of Massachusetts 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 shoes 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 and for the purpose of inducing the purchase of its said products, the respondent has made false and misleading representations with respect to the materials of which certain of its shoes are made, such representations being made by means of catalogs and price lists distributed among prospective purchasers and by other means.

Among and typical of such false representations is the legend "Alligator Calf" which the respondent uses to designate and describe certain of its shoes. Through the use of such legend the respondent represents that such shoes are made from the hide of an alligator. In truth and in fact such shoes are not made from the hide of an alligator but are made from a leather material other than the hide of an alligator which has been embossed in such manner that it simulates alligator leather.

PAR. 3. There is a marked preference on the part of a substantial portion of the purchasing public for shoes made from the hide of an alligator over shoes made from other leather materials.

PAR. 4. The use by the respondent of the acts and practices 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 erroneous and mistaken belief that respondent's products are made of certain designated kinds of materials, when such is not the fact. As a result of such erroneous and mistaken belief, the purchasing public has been induced to, and has, purchased a substantial quantity of respondent's products.

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 6th day of March 1940, issued and subsequently served its complaint in this proceeding upon said

respondent, The Stetson Shoe Co., Inc., a corporation, trading as M. N. Arnold Shoe Co., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. On March 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 Harrington, Huxley & Smith, counsel for the respondent, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, 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 Stetson Shoe Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts with its office and principal place of business at South Weymouth, Mass. The respondent trades under the style and name of M. N. Arnold Shoe Co. The respondent is now and has been for more than 1 year last past engaged in the manufacture, sale, and distribution of shoes. Respondent causes and has caused its said products, when sold, to be shipped or transported from its place of business in the State of Massachusetts 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 shoes 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 and for the purpose of inducing the purchase of its said products, the respondent has made

false and misleading representations with respect to the materials of which certain of its shoes are made, such representations being made by means of catalogs and price lists distributed among prospective purchasers and by other means.

Among and typical of such false representations is the legend "Alligator Calf" which the respondent uses to designate and describe certain of its shoes. Through the use of such legend the respondent represents that such shoes are made from the hide of an alligator. In truth and in fact such shoes are not made from the hide of an alligator but are made from a leather material other than the hide of an alligator which has been embossed in such manner that it simulates alligator leather.

PAR. 3. There is a marked preference on the part of a substantial portion of the purchasing public for shoes made from the hide of an alligator over shoes made from other leather materials.

PAR. 4. The use by respondent of the acts and practices 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 erroneous and mistaken belief that respondent's products are made of certain designated kinds of materials, when such is not the fact. As a result of such erroneous and mistaken belief, the purchasing public has been induced to purchase, and has purchased, a substantial quantity 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, the answer of the respondent, and a stipulation as to the facts entered into between Harrington, Huxley & Smith, counsel for the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Stetson Shoe Company, Inc., a corporation, trading as M. N. Arnold Shoe 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 its shoes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "alligator," or any other word of similar import or meaning, to designate or describe shoes not made from the hide of an alligator, or otherwise representing that shoes made from other leathers or materials, are made from alligator hide: *Provided, however*, That said word "alligator" may be used to describe the finish of shoes which are made from other materials and which are finished or embossed to resemble alligator leather, when said word is immediately accompanied by another word or words clearly indicating that said designation refers only to the pattern embossed on such materials.

2. Representing that the materials or leathers of which respondent's shoes are made are other than the actual materials or leathers used in such shoes.

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 RU-EX COMPANY

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

Docket 4387. Complaint, Nov. 25, 1940—Decision, Feb. 27, 1941

Where a corporation engaged in interstate sale and distribution of its "Ru-Ex" medicinal preparation; in advertisements disseminated through the mails, in newspapers, circulars, and other advertising literature, and by various other means—

(*a*) Represented, directly and by implication, that its said product was entirely safe and harmless and might be used without danger to health of user, through statements captioned "LEMON JUICE RECIPE CHECKS RHEUMATIC PAIN QUICKLY" and inviting sufferers "from rheumatic, arthritis or neuritis pain" to "try this simple inexpensive home recipe" (of Ru-Ex with lemons and water) "that thousands are using," and through use of other statements of similar import;

Facts being such preparation was not in all cases safe or harmless, due to potassium iodide content in quantity sufficient to cause, in some instances, injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and including use by those with goiter or tuberculosis in either active or arrested stage; and

(*b*) Failed to reveal facts material in light of representations contained in said advertisements, and that use of such preparation, under conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in injury to health, in that they contained neither caution against its use by persons having such ailments, nor to effect that it should be used only as directed on label;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and into purchase of substantial quantities of its said preparation:

Held, That such acts and practices, under 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.

Frank E. & Arthur 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 The Ru-Ex Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest,

hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Ru-Ex Co., is a corporation duly chartered, organized, and existing under and by virtue of the laws of Minnesota, with its principal office and place of business located at 500 Foot-Schulze Building, in the city of St. Paul, State of Minnesota. Respondent is now and since April 1, 1940, has been engaged in the sale and distribution of a certain medicinal preparation designated as "Ru-Ex."

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 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 herein mentioned has maintained, a course of trade in its 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 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 advertisements in newspapers, and by circulars and other advertising literature, are the following:

LEMON JUICE RECIPE CHECKS RHEUMATIC PAIN QUICKLY

If you suffer from rheumatic, arthritis or neuritis pain, try this simple inexpensive home recipe that thousands are using. Get a package of old reliable Ru-Ex Compound today. Mix it with a quart of water, add the juice of 4 lemons. It's easy. No trouble at all and pleasant. You need only 2 tablespoonfuls two times a day. Often within 48 hours—sometimes overnight—splendid results are obtained. If the pains do not quickly leave and if you do not feel better, Ru-Ex will cost you nothing to try as it is sold under an absolute money-back guarantee. We recommend RU-EX Compound.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and others of similar import not specifically set out herein, respondent represents, directly or by implication, that its said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

PAR. 4. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not in all cases safe or harmless, as it contains the drug potassium iodide in a quantity sufficient to cause, in some instances, injury to health if said preparation is used 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 goiter or tuberculosis in either the active or arrested stage. In cases of goiter the tendency of potassium iodide is to convert a benign adenoma to a toxic adenoma. In cases of arrested tuberculosis the tendency of potassium iodide is to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tubercular process. In cases of active tuberculosis potassium iodide tends to prevent or retard the healing process.

PAR. 5. The advertisements disseminated by the respondent, as aforesaid, contain neither a statement to the effect that said preparation should not be used by persons having tuberculosis or goiter, nor a cautionary statement to the effect that said preparation should be used only as directed on the label thereof. Consequently, such advertisements constitute false advertisements in 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.

PAR. 6. The use by the respondent of the foregoing false advertisements 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 25, 1940, issued and thereafter served its complaint in this proceeding upon respondent,

The Ru-Ex Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding 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, The Ru-Ex Co., is a corporation duly chartered, organized, and existing under and by virtue of the laws of Minnesota, with its principal office and place of business located at 500 Foot-Schulze Building, in the city of St. Paul, State of Minnesota. Respondent is now and since April 1, 1940, has been engaged in the sale and distribution of a certain medicinal preparation designated as "Ru-Ex."

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 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 herein mentioned has maintained, a course of trade in its 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 business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its 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 product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its 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:

LEMON JUICE RECIPE CHECKS RHEUMATIC PAIN QUICKLY

If you suffer from rheumatic, arthritis or neuritis pain, try this simple inexpensive home recipe that thousands are using. Get a package of old reliable Ru-Ex Compound today. Mix it with a quart of water, add the juice of 4 lemons. It's easy. No trouble at all and pleasant. You need only 2 tablespoonfuls two times a day. Often within 48 hours—sometimes overnight—splendid results are obtained. If the pains do not quickly leave and if you do not feel better, Ru-Ex will cost you nothing to try as it is sold under an absolute money-back guarantee. We recommend Ru-Ex Compound.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and others of similar import not specifically set out herein, respondent represents, directly or by implication, that its said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

PAR. 4. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation is not in all cases safe or harmless, as it contains the drug potassium iodide in a quantity sufficient to cause, in some instances, injury to health if said preparation is used 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 goiter or tuberculosis in either the active or arrested stage. In cases of goiter the tendency of potassium iodide is to convert a benign adenoma to a toxic adenoma. In cases of arrested tuberculosis the tendency of potassium iodide is to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tubercular process. In cases of active tuberculosis potassium iodide tends to prevent or retard the healing process.

PAR. 5. The advertisements disseminated by the respondent as aforesaid, contain neither a statement to the effect that said preparation should not be used by persons having tuberculosis or goiter, nor a cautionary statement to the effect that said preparation should be used only as directed on the label thereof. Consequently, such advertisements constitute false advertisements in 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.

PAR. 6. The use by the respondent of the foregoing false advertisements, 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 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 of the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent The Ru-Ex 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 designated as "Ru-Ex," or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or 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 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 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

WORTHMORE SALES PROMOTION SERVICE, INC.

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

Docket 4430. Complaint, Dec. 20, 1940—Decision, Feb. 27, 1941

Where a corporation engaged in manufacture of its Rap-A-Pak device or novelty holder for cigarette packages, and in competitive interstate sale and distribution thereof—

Falsely represented in advertisements in various magazines and other periodicals of interstate circulation and through circulars and letters sent to prospective or potential representatives, that "A man should make $75 to $100 commission weekly" and "Earn $75 to $100 commission weekly" selling its device, when in fact it was impossible for such persons thus to earn in usual or normal course of business any amount approximating either of such figures, and average earnings of its said representatives were but a small percentage of those so represented;

With effect of misleading and deceiving a substantial number of prospective agents and salesmen into mistaken and erroneous belief that earnings to be achieved through sale of its device were far in excess of those possible in fact, and with result that substantial number of such persons were induced to accept employment from him rather than his competitors, many of whom do not falsely represent amounts which representatives thereof may thus earn:

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

Mr. Randolph W. Branch for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Worthmore Sales Promotion Service, 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 is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and has its principal office and place of business at 221 East Twentieth Street, Chicago, Ill. Respondent for more than 1 year last past has

been engaged in the manufacture and sale of a device called "Rap-A-Pak," which is a novelty holder for cigarette packages.

In the course and conduct of its business respondent causes said device, 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. 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. Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with individuals and firms 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 articles of merchandise intended for the same purpose as that for which respondent's product is intended.

PAR. 3. For the purpose of inducing persons to agree to represent respondent in the sale of its product throughout the various States, and thus to further the sale of its product, the respondent advertises in various magazines and other periodicals having an interstate circulation, and respondent has also forwarded to prospective or potential representatives of the respondent throughout the various States of the United States and in the District of Columbia circulars and letters. Among and typical of the statements and representations contained in the aforesaid advertisements, circulars, and letters are the following:

A man should make $75 to $100 commission weekly.
Earn $75 to $100 commission weekly.

Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondent represents and has represented that agents and salesmen selling respondent's device customarily earn from $75 to $100 per week in the usual and normal course of business.

PAR. 4. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, it is impossible for agents and salesmen selling respondent's device to earn in the usual and normal course of business $75 to $100 per week or any amount approximating either of such figures. The average earnings of the agents and salesmen representing the respondent in the sale of its device have been and are but a small percentage of the aforesaid earnings represented by the respondent.

PAR. 5. The aforesaid acts and practices of the respondent have the tendency and capacity to and do mislead and deceive a substantial number of prospective agents and salesmen into the mistaken and erroneous belief that the earnings to be achieved through the sale of respondent's device are far in excess of the earnings which are in fact possible for such agents and salesmen to achieve. As a result of such erroneous and mistaken belief, a substantial number of agents and salesmen have been induced to accept employment from respondent rather than from respondent's competitors, many of whom do not falsely represent the amounts to be earned from the sale of their products. In consequence substantial injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 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 December 20, 1940, issued and subsequently served its complaint in this proceeding upon respondent, Worthmore Sales Promotion Service, Inc., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 23, 1941, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and has its principal office and place of business at 221 East Twentieth

Street, Chicago, Ill. Respondent for more than 1 year last past has been engaged in the manufacture and sale of a device called "Rap-A-Pak," which is a novelty holder for cigarette packages.

In the course and conduct of its business respondent causes said device, 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. 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. Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with individuals and firms 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 articles of merchandise intended for the same purpose as that for which respondent's product is intended.

PAR. 3. For the purpose of inducing persons to agree to represent respondent in the sale of its product throughout the various States, and thus to further the sale of its product, the respondent advertises in various magazines and other periodicals having an interstate circulation, and respondent has also forwarded to prospective or potential representatives of the respondent throughout the various States of the United States and in the District of Columbia circulars and letters. Among and typical of the statements and representations contained in the aforesaid advertisements, circulars and letters are the following:

A man should make $75 to $100 commission weekly.
Earn $75 to $100 commission weekly.

Through the use of the foregoing statements and representations and others of similar import not specifically set-out herein, the respondent represents and has represented that agents and salesmen selling respondent's device customarily earn from $75 to $100 per week in the usual and normal course of business.

PAR. 4. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, it is impossible for agents and salesmen selling respondent's device to earn in the usual and normal course of business $75 to $100 per week or any amount approximating either of such figures. The average earnings of the agents and salesmen representing the respondent in the sale of its device have been and are but a small percentage of the aforesaid earnings represented by the respondent.

PAR. 5. The aforesaid acts and practices of the respondent have the tendency and capacity to and do mislead and deceive a substantial number of prospective agents and salesmen into the mistaken and erroneous belief that the earnings to be achieved through the sale of respondent's device are far in excess of the earnings which are in fact possible for such agents and salesmen to achieve. As a result of such erroneous and mistaken belief, a substantial number of agents and salesmen have been induced to accept employment from respondent rather than from respondent's competitors, many of whom do not falsely represent the amounts to be earned from the sale of their products.

CONCLUSION

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

ORDER 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, Worthmore Sales Promotion Service, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cigarette package holders or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing as earnings or profits of agents, salesmen, or distributors selling respondent's products any amount in excess of the average net earnings or profits regularly and customarily made by respondent's agents, salesmen, or distributors in the normal and usual course of business.

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

IN THE MATTER OF

RABHOR CORPORATION

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

Docket 3619. Complaint, Oct. 3, 1938—Decision, Feb. 28, 1941

Where a corporation engaged in manufacture of men's robes, jackets, lounge suits, and other wearing apparel, and in competitive interstate sale and distribution thereof; in advertisements which it furnished retailers for insertion in newspapers and other publications of interstate circulation, and through circulars with colored depictions of certain of its products which it furnished retailers for distribution to purchasers and prospective purchasers and on tags affixed to certain products—

(*a*) Represented, directly and by inference, that its garments were made entirely of silk, product of the cocoon of the silkworm, through use of words "silk" and "satin," and through such typical statements as "* * * silk lined jacket" (or robe), "Silk warp brocade. Satin lined," and "* * * made from Suskana silk. Pure silk lined";

Notwithstanding fact that garments were not made entirely of the esteemed and preferred product of cocoon of silkworm, as long understood by consuming and purchasing public from words "silk" and "satin," but were composed of various combinations and mixtures of cotton, rayon, silk, and other fibers, and, as to certain of products in question, were made from material composed of 70 percent cotton and 30 percent silk; and

(*b*) Failed to disclose such content of rayon, which, with appearance and feel of silk, is by the purchasing public practically indistinguishable therefrom, with result of concealing fact that garments concerned were made in whole or in part of chemical fiber or fabric aforesaid;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and of placing in the hands of uninformed and unscrupulous retailers means and instrumentality whereby they might, and did, mislead and deceive such public into erroneous belief that said garments were made wholly of silk, and of thereby diverting trade unfairly to it from competitors who truthfully advertised their respective 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.

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

Mr. James L. Fort and *Mr. Robert Mathis, Jr.*, for the Commission.

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

PARAGRAPH 1. Respondent, Rabhor Corporation, 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 1450 Broadway, in the city of New York, State of New York.

Respondent is now, and for several years last past has been, engaged in the business of manufacturing men's robes, jackets, lounge suits, and other wearing apparel for men, and in the sale and distribution thereof.

Respondent causes said merchandise when sold to be transported from its place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia.

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

Respondent is now, and at all time herein mentioned has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of men's robes, jackets, lounge suits, and other wearing apparel for men, 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, respondent, in soliciting the sale of, and selling, its merchandise in such commerce, caused, and now causes, advertising matter to be inserted in newspapers and other publications having a circulation between and among the several States of the United States. In certain of said advertisements respondent has made various statements purporting to be descriptive of the nature, quality, and character of its merchandise, among which are the following:

Suskana Silk Lined Jacket.

Suskana Silk Lined Robe.

Silk Warp Brocade, Satin Lined.

Distinguished tailoring combines with the silk warp brocade fabric to make this a robe he'll never forget. Satin lined.

Certain garments are also labeled:

This garment made from Suskana Silk. Pure silk lined.

Respondent sells its various garments under the trade name "Suskana" and other trade names.

Respondent also furnished to dealers purchasing its garments advertising copy containing statements similar to those above quoted, for use in local newspapers.

All of such statements, together with similar statements appearing in respondent's advertising literature and on the labels of its garments, purport to be descriptive of its merchandise and of the material out of which it is made. In all of its advertising literature and through labels and 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 garments are made of silk, the product of the cocoon of the silkworm.

PAR. 3. The representations made by respondent with respect to the materials out of which its garments are made are false, misleading, and untrue. In truth and in fact the said garments are not made of silk, the product of the cocoon of the silkworm.

The true facts are that said garments are made of cotton, rayon, and silk. None of the garments contain a predominance of silk by weight.

The representations above set forth were, and are, false and misleading in that said garments so represented, designated, and referred to were not described as being in whole or in part rayon or cotton, as the case may be, and in that the word "rayon" was not used in said advertising in immediate connection and conjunction with said descriptive words and such representation. Where the word "rayon" appeared in respondent's advertising it indicated the presence of this fabric in other garments but not in the garments advertised as herein set forth. Such representations, together with the failure to so describe the materials of which said garments were made, had and have the tendency, capacity, and effect of concealing the fact that such garments were and are made, in whole or in part, of rayon or cotton, as the case may be, when it was, and is, the duty of the respondent in any circumstances to make disclosure of the fact that such garments were and are composed, in whole or in part, of rayon by the use of the word "rayon" in immediate connection with said descriptive words and in such a way and manner as to apprise and inform the purchasing and consuming public that such garments were and are composed, in whole or in part, of rayon, as the case may be.

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. Silk fiber has long been woven into a variety of fabrics and a variety of distinctive terms have been applied to the fabrics resulting from different types of treatment and weaving of silk fiber. The words "satin" and "crepe" or words of similar import or meaning, when used alone or unaccompanied by the name of a specific fabric or fiber in connection with the designation or description of men's robes, jackets, or other wearing apparel for men, have been for a long time, and still are, associated in the minds of the public with the 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 chemical fiber or fabric that simulates silk in that it has the appearance and feel of silk and is, by the purchasing public, practically indistinguishable from silk.

PAR. 5. There are among respondent's competitors many who sell and distribute men's robes, jackets, lounge suits, and other wearing apparel for men, who do not in any way misrepresent the material out of which their garments are made.

PAR. 6. Each and all of the aforesaid false and misleading statements and representations made by the respondent in describing its robes, jackets, lounge suits, and other wearing apparel for men, as hereinabove set out, and the failure to truthfully describe the materials of which said garments were made as aforesaid, have a tendency and capacity to, and do, mislead and deceive a substantial portion of the purchsing public into the erroneous belief that all of said representations are true. The use of said representations and statements also place in the hands of the retail dealers a means and instrumentality whereby they mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said garments are made wholly of silk, with the result that trade has been diverted unfairly to respondent from competitors who truthfully advertise their respective merchandise. As a consequence thereof, injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and to respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 3, 1938, issued, and subsequently served, its complaint in this proceeding upon respondent, Rabhor 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 said complaint were introduced by James L. Fort, attorney for the Commission, respondent being represented by Erwin Feldman, Esq. (no testimony being offered in opposition to the complaint), before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint (respondent not having filed brief), and oral arguments of Robert Mathis, Jr., attorney for the Commission, and Erwin Feldman, Esq., attorney for respondent; and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent, Rabhor Corporation, 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 1450 Broadway in the city and State of New York. Respondent is now and for several years last past has been engaged in the business of manufacturing men's robes, jackets, lounge suits, and other wearing apparel for men, and in the sale and distribution thereof.

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

Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations, and with individuals,

firms, and partnerships engaged in the sale and distribution of men's robes, jackets, lounge suits, and other wearing apparel for men 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 in soliciting the sale of and selling its merchandise in commerce has caused and now causes various advertising matter to be furnished to retail dealers for insertion in newspapers and other publications having a circulation among and between the various States of the United States and in the District of Columbia. In addition to the foregoing advertising, respondent furnishes to retail dealers various circulars with lithographed colored pictorial representations of certain of its products for distribution to purchasers and prospective purchasers of respondent's products. In certain of said advertisements which appeared with pictorial representations of respondent's products aforesaid respondent has made various statements purporting to be descriptive of the quality, character, and fabric content of its merchandise among which the following are typical:

Suskana silk lined jacket.

Suskana silk lined robe.

Silk warp brocade. Satin lined.

Distinguished tailoring combined with silk warp brocade fabric to make this a robe he'll never forget. Satin lined.

DeLuxe Suskana satin lined robe of luxurious brocade * * *.

On certain of its robes, the respondent affixed various tags containing among other printed matter the following:

This garment is a genuine Rabhor robe, tailored in exclusive Suskana jacquard. Pure silk lined.

This garment made from Suskana silk. Pure silk lined.

All of such statements, together with other statements of similar effect which appeared in respondent's advertising literature, on the circulars furnished to retailers for distribution to the purchasing public, and on tags and labels affixed to its garments, purport to be descriptive of its merchandise and of the nature and quality of the fabrics out of which such merchandise is made. By the means set forth above respondent directly and by inference represents and has represented that its garments are made entirely of silk, the product of the cocoon of the silkworm.

PAR. 3. The representations so made by respondent with respect to the nature and quality of the fabrics out of which its garments are made are false, misleading, and untrue. In truth and in fact the said garments so advertised were not made entirely of silk, the product

of the cocoon of the silkworm, but are made of various combinations and mixtures of cotton, rayon, silk, and fibers other than silk.

A portion of respondent's products were manufactured from a material composed of 70 percent cotton and 30 percent 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 and are preferred for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics and a variety of distinctive terms have been applied to the fabrics resulting from different types of treatment and weaving of silk fiber. Among such terms is the term "satin."

The word "satin" and other terms of similar import or meaning, when used alone or unaccompanied by the name of a specific fabric of fiber, in connection with the designation or description of garments, as distinguished from the weave used in the fabric, have been for a long time, and still are, associated in the minds of the purchasing public with the 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 alone.

The word "rayon" is the name of a chemical fiber or fabric that simulates silk in that it has the appearance and feel of silk and is, by the purchasing public, practically indistinguishable therefrom.

The use by respondent of the representations hereinabove set forth, together with the failure to disclose the rayon content of the fabrics from which said garments were made, has had and now has the tendency, capacity, and effect of concealing the fact that such garments were and are made in whole or in part of rayon.

PAR. 5. The Commission finds that there are among respondent's competitors a number who sell and distribute men's robes, jackets, lounge suits, and other wearing apparel for men, who do not in any way misrepresent the kind, quality, or fabric content of the material out of which their garments are made.

PAR. 6. The aforesaid false and misleading statements and representations used by the respondent in describing its robes, jackets, lounge suits, and other wearing apparel for men, as hereinabove set out, and the failure to truthfully describe and designate the kind or the fabric content of the materials of which said garments were made, have had the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. By the use of said

representations and statements and the practice of failing to disclose the rayon content of its products, respondent places in the hands of uninformed and unscrupulous retail dealers a means and instrumentality whereby they may, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said garments are made wholly of silk, with the result that trade has been diverted unfairly to respondent from various competitors who truthfully advertise their respective merchandise.

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 Edward E. Reardon, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint (no testimony being offered in opposition thereto), brief filed in support of the complaint and oral arguments by Robert Mathis, Jr., counsel for the Commission, and by Erwin Feldman, 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, Rabhor 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 men's robes, jackets, lounge suits, and other wearing apparel, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "silk" or any other word or term descriptive of silk to describe, designate, or in any way refer to any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm: *Provided*, *however*, That in the case of fabrics or products composed in part of silk and in part of other fibers such term or similar terms may be used as descriptive of the silk content if there is used in immediate connection or conjunction

therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof.

2. Using the unqualified term "satin" or any other descriptive term of similar import or meaning indicative of silk to describe, designate, or in any manner refer to any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm: *Provided, however,* That when said word or descriptive term is used truthfully to designate or describe the type of weave, construction, or finish, such word shall be qualified by using in immediate connection and conjunction therewith, in letters of at least equal size or conspicuousness, a word or words clearly and accurately naming or describing the fibers or materials from which said products are made.

3. Advertising, offering for sale, or selling fabrics, garments, or other products composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such fabrics or products are composed of rayon, and when such fabrics or products are composed in part of rayon and in part of other fabrics or materials, such fabrics or materials shall be designated in immediate connection or conjunction with the word "rayon" in letters of at least equal size and conspicuousness which shall truthfully describe and designate each constituent fiber or material thereof.

4. Representing in any manner that fabrics or products offered for sale or sold by it contain silk in greater quantity than is actually the case.

5. Representing in any manner or by any means that respondent's products are composed of fibers or materials other than those of which such products are actually composed.

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

IVAN D. HUSSEY, TRADING AS HUSCO MANUFACTURING COMPANY, THE HUSSEY MANUFACTURING & DISTRIBUTING COMPANY, ETC.

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

Docket 4386. Complaint, Nov. 23, 1940—Decision, Feb. 28, 1941

Where an individual engaged in interstate sale and distribution of hosiery, knives, fountain pens, and other articles in various assortments which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and included, as illustrative of kind of assortments and schemes, 24 pairs of men's hose and a push card, for use in their sale and distribution to purchasers under a plan, announced thereon, by which customer paid from 1 cent to 25 cents a pair, dependent upon particular number he secured by chance—

(*a*) Sold such assortments to wholesalers, jobbers, and retailers by whom, as direct or indirect purchasers, they were exposed and sold to purchasing public in accordance with such sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of his merchandise in accordance with sales plan involving game of chance or sale of a chance to procure an article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use method involving game of chance or sale of a chance to win by chance or one contrary to public policy, and refrain therefrom;

With result that many persons were attracted by his said sales plan and element of chance involved therein, and were thereby induced to buy and sell his products in preference to those of his said competitors who do not use same or equivalent methods, thereby unfairly diverting trade in commerce from them to him, to the substantial injury of competition in commerce; and

(*b*) Represented through use of word "Manufacturing" in various trade names employed by him, and otherwise, that he owned or operated a factory in which his products were made, and that he was the manufacturer of all of the products sold by him, facts being that, excepting one only, such products were purchased from others and were not made in a plant owned, operated, or controlled by him;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them mistakenly to believe that he was such a manufacturer, preferentially dealt with directly by substantial portion of purchasing public as securing them, in their belief, lower prices and other advantages not otherwise obtainable, and to purchase said articles from him as owner, operator, or controller of plant where same were made:

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 Ivan D. Hussey, individually and trading as Husco Manufacturing Co., The Hussey Manufacturing & Distributing Co., The Hussey Distributing Co., Hussey Co., Hussey Manufacturing Co., and Terry Products Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ivan D. Hussey, is an individual trading as Husco Manufacturing Co., The Hussey Manufacturing & Distributing Co., The Hussey Distributing Co., Hussey Co., Hussey Manufacturing Co., and Terry Products Co., with his principal office and place of business located at 85 Broad Street SW., Atlanta, Ga. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of hosiery, knives, fountain pens, ties, tobacco pouches, cigarette lighters, and other articles of merchandise. Respondent causes, and has caused, said products, when sold, to be transported from his aforesaid place of business in the State of Georgia to purchasers thereof at their respective points of location in various States of the United States other than the State of Georgia and in the District of Columbia. 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 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 to wholesale dealers, jobbers, and retail dealers certain assortments 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 respondent, and is as follows:

This assortment consists of 24 pairs of men's hose together with a device commonly called a push card. The push card bears 24 small partially perforated disks, on the face of each of which is printed the word "Push." Concealed within each disc is a number which is disclosed when the disk is pushed or separated from the card. The purchaser pays in cents the amount of the number punched from the said card, to and including the number 25. Purchasers punching numbers over 25 pay only 25 cents. The purchasers aforesaid receive one of said pairs of men's hose for the amount of money expended. The numbers are effectively concealed within the said disks until the disks are pushed or separated from the card. The push card bears a legend or instructions as follows:

EVERY PUNCH WINS

Pay What You Draw
1¢ to 25¢

YOU CAN'T LOSE

Every Punch Wins
One Pair Of
High Quality
MEN'S HOSE

ALL PUNCHES
ARE WINNERS

Sales of respondent's merchandise by means of said push card are made in accordance with the above-described legend or instructions. The amount said purchasers are to pay for said articles of merchandise is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various other push cards for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's merchandise 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 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 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 which is 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 said 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 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. 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 as aforesaid, respondent, in soliciting the sale of and in selling his merchandise, has represented, through the use of the word "manufacturing" in his trade names Husco Manufacturing Co., The Hussey Manufacturing & Distributing Co., and Hussey Manufacturing Co., and by other means, that he owns or operates a factory where his products are manufactured and that he is the manufacturer of all of the products sold by him. While the respondent manufactures one of the products sold under the trade name Terry Products Co., all of the remaining

products are not manufactured in a plant owned, operated, or controlled by the respondent but are purchased from other parties.

PAR. 6. The use by the respondent of the word "manufacturing" in his trade names as aforesaid constitutes within itself a false and misleading representation that the respondent owns or operates a factory in connection with his said business and that he manufactures all of his said products.

PAR. 7. 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. 8. The use by the respondent of the word "manufacturing" in his trade names, and by other means, as hereinabove alleged, has had and now has the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them to mistakenly and erroneously believe that the respondent is the manufacturer of such products and owns and operates or controls the plant wherein such products are manufactured, and to purchase respondent's products on account of such mistaken and erroneous belief.

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 November 23, 1940, issued and on November 25, 1940, served its complaint in this proceeding upon respondent, Ivan D. Hussey, individually and trading as Husco Manufacturing Co., The Hussey Manufacturing & Distributing Co., The Hussey Distributing Co., Hussey Co., Hussey Manufacturing Co., and Terry Products Co., charging him with the use of unfair methods of competition and unfair and deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of 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 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, Ivan D. Hussey, is an individual trading as Husco Manufacturing Co., The Hussey Manufacturing & Distributing Co., The Hussey Distributing Co., Hussey Co., Hussey Manufacturing Co., and Terry Products Co., with his principal office and place of business located at 85 Broad Street SW., Atlanta, Ga. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of hosiery, knives, fountain pens, ties, tobacco pouches, cigarette lighters, and other articles of merchandise. Respondent causes, and has caused, said products, when sold, to be transported from his aforesaid place of business in the State of Georgia to purchasers thereof at their respective points of location in various States of the United States other than the State of Georgia and in the District of Columbia. 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 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 to wholesale dealers, jobbers, and retail dealers certain assortments 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 respondent, and is as follows:

This assortment consists of 24 pairs of men's hose together with a device commonly called a push card. The push card bears 24 small

partially perforated disks, on the face of each 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 purchaser pays in cents the amount of the number punched from the said card, to and including the number 25. Purchasers punching numbers over 25 pay only 25 cents. The purchasers aforesaid receive one of said pairs of men's hose for the amount of money expended. The numbers are effectively concealed within the said disks until the disks are pushed or separated from the card. The push card bears a legend or instructions as follows:

EVERY PUNCH WINS
Pay What You Draw
1¢ to 25¢
YOU CAN'T LOSE

Every Punch Wins
One Pair of
High Quality
MEN'S HOSE
ALL PUNCHES
ARE WINNERS

Sales of respondent's merchandise by means of said push card are made in accordance with the above-described legend or instructions. The amount said purchasers are to pay for said articles of merchandise is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various other push cards for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's merchandise 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 the respondent of said sales plan or method in the sale of his merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of 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 which is 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 said 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 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. 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 as aforesaid, respondent, in soliciting the sale of and in selling his merchandise, has represented, through the use of the word "manufacturing" in his trade names, Husco Manufacturing Co., The Hussey Manufacturing & Distributing Co., and Hussey Manufacturing Co., and by other means, that he owns or operates a factory where his products are manufactured and that he is the manufacturer of all of the products sold by him. While the respondent manufactures one of the products sold under the trade name Terry Products Co., all of the remaining products are not manufactured in a plant owned, operated, or controlled by the respondent but are purchased from other parties.

PAR. 6. The use by the respondent of the word "manufacturing" in his trade names as aforesaid constitutes within itself a false and misleading representation that the respondent owns or operates a factory in connection with his said business and that he manufactures all of his said products.

PAR. 7. 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. 8. The use by the respondent of the word "manufacturing" in his trade names, and by other means, as hereinabove found, has had and now has the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them to mistakenly and erroneously believe that the respondent is the manufacturer of such products and owns and operates or controls the plant wherein such products are manufactured, and to purchase respondent's products on account 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 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 Ivan D. Hussey, individually and trading as Husco Manufacturing Co., the Hussey Manufacturing & Distributing Co., The Hussey Distributing Co., Hussey Co., Hussey Manufacturing Co., and Terry Products 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, knives, fountain pens, ties, tobacco pouches, cigarette lighters, 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 hosiery, knives, fountain pens, ties, tobacco pouches, cigarette lighters, or any articles of 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 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 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 respondent shall cease from the use of the word "manufacturer" or "manufacturing" as part of any trade name used by him unless and until he shall operate a factory wherein such merchandise is wholly manufactured.

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

IN THE MATTER OF

GENERAL MOTORS CORPORATION AND GENERAL MOTORS 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 3173. Complaint, July 16, 1937—Decision, Mar. 5, 1941

Where a corporate manufacturer of automotive vehicles, and its wholly owned selling subsidiary, engaged in such manufacture and in competitive interstate sale and distribution to its retail dealers of their cars, under various names and in various models, as previously sold by five corporate subsidiaries, since dissolved;

In their extensive advertising in newspapers and various periodicals and on billboards and through sundry other advertising media as carried on by them, and as theretofore carried on by said manufacturer and its five corporate subsidiaries prior to assumption of their functions by such subsidiary;

Made use of pricing practices which were misleading and deceptive, in that prices featured in their advertisements, in which explanatory matter, if any, was either inadequate or so inconspicuous as to be of no value in removing or curing deceptive tendencies inherent therein, were not in fact prices of cars illustrated or described, as set forth in price lists supplied by them to their retail dealers; and, in thus deceptively and misleadingly advertising their prices—

(1) Quoted price along with depiction of a higher priced car, with no explanation at all, in some instances, which would advise the most careful reader that the car illustrated could not be purchased for price quoted, and in other instances, with higher priced car depicted shown in conjunction with price of cheaper car and words "And Up," with effect of thereby conveying false impression that pictured car was obtainable at featured price, but that more expensive models were available at a higher one;

(2) Featured price, in other cases, in large figures in conjunction with illustrative or descriptive matter qualified by another and higher, and sometimes true, price in very small figures placed in some inconspicuous location on face of the advertisement, with result that members of public reading such advertisements expected to obtain car illustrated at place of manufacture for price emphasized in large figures, plus actual transportation charges to place of purchase;

(3) Quoted and advertised prices to which, in small type, were added further charges for accessories appearing on car illustrated or described, with result that members of public expected to purchase car with equipment exactly as shown for price designated in large figures on face of advertisement, notwithstanding such expressions, in small type, in such advertisements as "accessories extra," "white side wall tires extra," "fender wells extra," and "optional equipment extra," which seemed entirely to escape their attention;

(4) Quoted and advertised prices to which, without disclosure in their said advertising, they added certain charges for intangible items, including,

among other things, delivery and handling charge, advertising, new car conditioning, and factory handling charge, with result of deception of public through such nondisclosure; and

(5) Quoted and advertised prices without giving to the public adequate notice, through appropriate explanation adjacent to quoted price, that, in addition to other charges added to their advertised prices, extra charge was generally made for Federal, State, and local taxes, so that their said failure to give such notice as to said items, which it is impractical to include in price set forth in advertisement of Nation-wide circulation, constituted deception of public;

With result that effect of their said advertisements was to convey to purchasing public impression that their cars were obtainable at retail at prices much less than was the fact, and thereby to attract prospective purchasers who might not otherwise consider purchase of type of car thus advertised, except for low prices publicly quoted, into showrooms of their retailers where, once purchaser was interested in car by personal inspection, ultimate price was built up by additional charges until, in some instances, it was as much as $500 or $600 over and above what appeared to be retail selling price of car illustrated or described in their advertising, and that members of public were led erroneously to believe, through such misleading and deceptive advertisements, that each of cars illustrated or described could be purchased at point of manufacture for price featured in advertisements, and at points distant from place of manufacture for such price plus cost of transportation to place of purchase, and with effect, through said acts, practices, and methods in advertising, as above set forth, in connection with sale and distribution of their passenger motor vehicles, that substantial portion of purchasing public was induced to buy substantial volume of its said vehicles, and trade was thereby diverted unfairly to them from their competitors who truthfully advertise and represent prices of their cars and sell same at prices published, represented, or designated by them:

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* and *Mr. John W. Addison*, trial examiners.

Mr. James M. Hammond for the Commission.

Mr. John Thomas Smith and *Mr. Anthony J. Russo*, of New York City, for respondents.

Complaint

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that General Motors Corporation and General Motors Sales Corporation, hereinafter referred to as respondents, have been and are using unfair

methods of competition in commerce as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, General Motors Corporation and General Motors Sales Corporation, are corporations organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having their principal places of business in the General Motors Building, Detroit, Mich.

PAR. 2. Respondent, General Motors Corporation, for a long time past has been engaged in the business of manufacturing passenger motor vehicles. Said manufacturing business was, prior to November 1936, primarily conducted through its several operating divisions, producing Chevrolet, Oldsmobile, Pontiac, Buick, Cadillac, and La Salle motorcars. The products thus manufactured were sold and shipped by the said General Motors Corporation either directly, or, prior to November 20, 1936, or thereabouts, through its wholly owned subsidiary corporations, to wit: Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co., and Cadillac Motor Co. On November 30, 1936, or thereabouts, these subsidiary selling corporations were dissolved, and their operating or selling functions assumed by the respondent General Motors Sales Corporation, which was incorporated in October 1936, by the respondent General Motors Corporation for the purpose of assuming the operating or sales functions of the several subsidiary corporations above referred to at the time of their dissolution on November 30, 1936, or thereabouts. The acts and practices of the said Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co., and Cadillac Motor Co., all now dissolved, are hereinafter alleged as the acts and practices of their parent corporation, the respondent General Motors Corporation, to the same effect as though specifically mentioned in each instance.

The said General Motors Sales Corporation is now, and since it commenced functioning on November 30, 1936, or thereabouts, has been engaged in the sale and shipment to dealers and distributors of the motor vehicles manufactured by its aforesaid parent company, General Motors Corporation, in interstate commerce and in foreign countries. These passenger motor vehicles, when sold, are transported from the State or States in which they are manufactured to the purchasers thereof located in a State or States other than the States in which such shipment or shipments originated. Said products also are extensively sold and shipped to various foreign countries.

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

PAR. 3. In the course and conduct of their business as hereinabove described, the respondent General Motors Corporation, acting concertedly and in cooperation with its subsidiary, General Motors Sales Corporation, and, prior to November 30, 1936, or thereabouts, with each of its now dissolved subsidiary and selling corporations named hereinabove, sells and distributes its passenger motor vehicles to the purchasing and consuming public through designated agents or dealers located at points throughout the United States and in foreign countries. These agents or dealers are individuals, firms, partnerships, and corporations not owned or directly controlled by said General Motors Corporation, or the General Motors Sales Corporation, nor prior to November 1, 1936, by the aforesaid dissolved subsidiary corporation, except insofar as their relationship is sustained by contracts pertaining to the manufacture and delivery of motor vehicles by the respondents herein, and the purchase thereof by said agents and dealers, who in turn resell the same to the purchasing and consuming public at prices advertised, announced, or suggested by the respondents hereto. The respondents' prices are predicated upon an advertised f. o. b., list or delivered retail price, usually at their factories or assembly plants, plus additional charges for transportation from said factories or assembly plants to their retail dealers, plus the cost of certain equipment, such as bumpers, bumper guards, spare tire, safety glass, and similar material necessary for the proper or legal operation of the vehicle, which varies in accordance with the model or type of car delivered. This so-called extra equipment is charged for in addition to respondents' advertised retail sales prices. Other additional charges are generally or frequently made to retail purchasers by the respondents through their local dealers, such as taxes, advertising assessments, handling, and conditioning charges. All these charges are added to the advertised f. o. b. or delivered price of each vehicle sold by the respondents, and are, in turn, included in the retail prices charged local purchasers by respondents' local agents and dealers. The actual delivered price of respondents' cars to a retail purchaser is, therefore, far in excess of respondent's published f. o. b. prices at a designated point, plus actual transportation costs to place of sale and delivery, and retail purchasers are not

informed of these additional charges over and above respondents' advertised retail delivered or f. o. b. prices

PAR. 4. In the course and conduct of their business, as described hereinabove, respondents, for the purpose of promoting the sale of their passenger motor vehicles, conduct and have conducted a nationwide advertising campaign in newspapers, magazines, price lists, by radio broadcasts, and in other ways, whereby they describe and illustrate their products. Accompanying these illustrations or descriptions, they feature, usually in large numerals, a designated list or f. o. b. price for the passenger vehicles so illustrated or described, in such a way as to convey or create the impression in the minds of members of the purchasing public that fully equipped cars so illustrated or described may be purchased complete and ready for operation at the said f. o. b. or delivery point for the prices so designated and featured or at other and distant points for the designated and featured prices, plus actual costs of transportation thereto.

In truth and in fact, the passenger motor vehicles described and illustrated in connection with or in immediate proximity with the featured list or f. o. b. prices are not the motor vehicles usually and commonly sold by the respondents for the featured prices, and generally the said featured price is the price charged by the respondents for their less expensive cars. The cars so described or illustrated in respondents' advertisements and price lists cannot be purchased at retail for the price featured in said advertisments and price lists at the f. o. b. or delivery point named therein or at ultimate destination plus actual freight or transportation charges thereto, without the payment of additional charges for added items, such as bumpers, bumper guards, spare tire, tube, safety glass, tire lock, and other accessories necessary or desirable for the actual or legal operation of a car, or constituting part of what the public understands to be a complete car ready for operation, as illustrated, described, or advertised by the respondents for sale at a designated point at a definite price. To these charges, over and above respondents' advertised delivered prices, are frequently and generally added further and additional charges to retail purchasers for items, among others, such as taxes, advertising, handling, and conditioning. In instances where statements are made of charges in addition to the specified f. o. b. price, such statements are set-out in such fine print as to be almost totally obscured by the large type or figures featuring the said f. o. b. price.

PAR. 5. The practice of the respondents in falsely advertising and representing fully equipped and higher priced passenger vehicles for sale at the price of lower priced cars, and charging purchasers a price therefor much higher than the featured price for the cars so described or illustrated, and in the other ways set-out hereinabove was and is calculated to mislead and deceive, and has misled and does mislead and deceive, a substantial portion of the purchasing and consuming public into the belief that upon the payment of the designated list or f. o. b. price, plus transportation charges to point of actual delivery, full title to and possession of said cars, fully equipped and ready for operation may be had. Respondents have also placed in the hands of retailers, agents, and dealers the means of making such false and misleading representations to the purchasing public, and have enabled their retailers, agents, and dealers to increase their own sales of respondents' products so described and represented, thereby lessening the market for similar goods made by other manufacturers of motor vehicles, the true delivered price of which is truthfully stated.

PAR. 6. Passenger motor vehicles of sundry competitors of respondents, likewise engaged in commerce as herein set-out, are and have been sold and distributed to the purchasing and consuming public in the various States of the United States and in the District of Columbia, in competition with respondents' passenger motor vehicles, but without fictitious and erroneous statements and representations in reference to the f. o. b. or delivered prices or retail sales prices as used or made by the respondents herein.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents as hereinabove set-out, in offering for sale and selling their passenger vehicles was and is calculated to, and had and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts, advertisements, and other representations of respondents, as hereinabove set-out, a substantial number of the purchasing and consuming public have purchased a substantial volume of respondents' passenger motor vehicles, with the result that trade has been unfairly diverted to the respondents from corporations, firms, partnerships, and individuals likewise engaged in the business of manufacturing, distributing, and selling passenger motor vehicles, who truthfully advertise and represent their products and who sell

the same at the retail delivered prices published, represented, or designated by them. As a result thereof, substantial injury has been, and is now being done by respondents to substantial competition in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of the respondents have been, and are all to the prejudice of the public and respondents' competitors, as aforesaid, and have been and are unfair methods of competition within the meaning and intent of section 5 of an act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 16, 1937, issued and served its complaint in this proceeding upon respondents, General Motors Corporation and General Motors Sales Corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of separate answers on the part of both respondents thereto, testimony and other evidence in support of the allegations of said complaint were introduced by James M. Hammond, attorney for the Commission, and in opposition to the allegations of the complaint by John Thomas Smith and Anthony J. Russo, attorneys for respondents, before John J. Keenan 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 said complaint, the answers 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 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, General Motors Corporation (hereinafter referred to as General Motors), is a corporation organized in 1916, pursuant to the laws of the State of Delaware.

At all times since its incorporation General Motors has been engaged in the manufacture and sale of motor vehicles. Among the principal products manufactured and sold by General Motors are passenger cars known as, and referred to by the names, Chevrolet, Oldsmobile, Pontiac, Buick, LaSalle, and Cadillac. Its extended interests are handled through the medium of a number of subsidiaries, by which means it promotes its various activities involving the sale of its cars, accessories, and parts to the purchasing public. Its principal office and place of business is at Detroit, Mich., in which city and State its principal factories also have their situs. It operates other factories and a considerable number of assembly plants in various other States. Its products are shipped from the State of Michigan and from its assembly plants to points throughout the United States and into the District of Columbia, for sale to the purchasing and consuming public through subsidiary corporations organized for that purpose.

PAR. 2. The respondent, General Motors Sales Corporation, was incorporated in October 1936, pursuant to the laws of the State of Delaware, and is a wholly owned subsidiary of General Motors, with its principal office and place of business in the General Motors Building, Detroit, Mich. It is now, and has been since its organization, engaged in selling substantially all of the cars manufactured by General Motors for domestic consumption and exercises within the General Motors organization all of the functions of five selling corporations which were in existence prior to the organization of General Motors Sales Corporation in 1936. These five selling corporations were the Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co., and Cadillac Motor Car Co., and are hereinafter referred to as the Chevrolet, Olds, Pontiac, Buick, and Cadillac Cos. They were all wholly owned subsidiaries of General Motors and were dissolved in 1936, at which time their assets were transferred to the parent company. The respondent, General Motors Sales Corporation, assumed the functions theretofore exercised by all of these dissolved corporations. The dissolved companies had existed for many years prior to their dissolution as wholly owned subsidiaries of General Motors.

PAR. 3. General Motors manufacturers, and for a number of years has manufactured, all of its cars, regardless of the type or brand name under which they are commonly sold. Immediately following their manufacture, these cars were sold to the Chevrolet, Olds, Pontiac, Buick, and Cadillac Co's. up to the time of their dissolution as above stated. These companies functioned only as selling agents,

and, except for the small percentage of cars sold by them at their own retail stores or sold by General Motors itself, as hereinafter described, disposed of the entire General Motors production of cars to authorized retail dealers in General Motors cars, of whom there are several thousand located in all parts of the United States. General Motors and, prior to their dissolution, the Chevrolet, Oldsmobile, Pontiac, Buick, and Cadillac Co's. caused the motor vehicles manufactured by General Motors to be transported from the factory where made to the purchasers thereof located at various points in the several States of the United States other than the State in which such motor vehicles were made and in the District of Columbia, and since the dissolution of the Chevrolet, Oldsmobile, Pontiac, Buick, and Cadillac Co's. said respondents General Motors and General Motors Sales Corporation have caused, and now cause, said motor vehicles to be transported from the factory where made to the purchasers thereof located at various points in the several States of the United States other than the State in which such motor vehicles were made and in the District of Columbia. Said respondents have maintained, and now maintain, a course of trade in said motor vehicles in commerce between and among the several States of the United States and in the District of Columbia. The retail dealers in turn sold these cars to the public, being aided in that respect by the respondent General Motors Sales Corporation and, prior to its organization, by the five dissolved subsidiaries above referred to.

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

PAR. 4. At the time of the institution of this proceeding, and for a long time prior thereto, General Motors, its wholly owned subsidiary, General Motors Sales Corporation, and, prior to their dissolution, the five selling subsidiaries, hereinabove referred to, were in open competition with other companies likewise engaged in the manufacture and sale of motor vehicles in commerce among and

between the various States of the United States and in the District of Columbia.

PAR. 5. Prior to their dissolution, the Chevrolet, Pontiac, Buick, and Cadillac Co's. maintained retail stores in various States, wherein cars manufactured by General Motors were sold direct to the public. Since the organization of the General Motors Sales Corporation these retail stores have been operated by it. All of the balance of the cars manufactured by General Motors, except a few sold by General Motors itself, pass through the hands of its selling subsidiaries direct to the public through the medium of the authorized dealers in General Motors products. General Motors does not deal with these dealers direct, but through its selling subsidiaries.

The relationship between the dealer and the selling subsidiary of General Motors, with whom he deals, was and is established by contract which is subject to cancelation on short notice. Those contracts outline generally the way in which the dealer shall conduct his business and the manner in which he may purchase and sell the type of car in which he deals. Respondents furnish and make available to the dealers the necessary forms for keeping their accounts, making reports, purchasing, selling, and financing cars.

General Motors Sales Corporation now sells, and prior to its organization the five dissolved companies sold, the cars manufactured by General Motors to the dealers either for cash or on their credit. The dealers in turn sell these cars to the retail purchasers in like manner.

PAR. 6. Prior to their dissolution the Chevrolet, Oldsmobile, Pontiac, Buick, and Cadillac Cos. were, and the respondent General Motors Sales Corporation is, wholly owned and controlled by the respondent General Motors, and respondent General Motors and said subsidiaries acted jointly in the publication and circulation of the advertising matter hereinafter referred to.

PAR. 7. For the guidance of their retail dealers, respondents furnish them with retail price lists covering each new model, together with changes from time to time. These price lists indicate the list price or base price and the charges to be added thereto for handling, federal taxes, transportation and other items, as hereinafter shown, which make up the ultimate retail delivered price at place of sale. Federal taxes are referred to in said price lists and in invoices as "E. O. H.," or extra overhead. In some instances, these price lists are termed on their face "suggested price list," and, in other instances, they bear the designation "price list"; regardless of what they were termed, they were observed by retail dealers in the sale of respondents'

products to the public, and purchasers were charged in accordance therewith.

PAR. 8. In the course and conduct of their business in said commerce as aforesaid, respondents, and the Chevrolet, Oldsmobile, Pontiac, Buick, and Cadillac Cos. prior to their dissolution, advertised their products extensively in newspapers, magazines, and various other periodicals on billboards and through sundry other advertising media. During the period from 1934 to 1939, inclusive, the respondents and said dissolved subsidiaries used various types of advertisements in furtherance of the sale of their passenger cars. Some advertisements either illustrated or described definite models but set out no selling price whatever; other advertisements stated a price but did not illustrate the car described. The type of advertisement most used during this period was that in which a pictorial illustration of a definite car appeared, accompanied by a designated price in a conspicuous place in the advertisement. In some instances, the price stated was accompanied by, or through an asterisk referred to, explanatory matter in fine print at an inconspicuous place which gave detailed information as to the meaning and significance of the designated price and as to the price of the illustrated car as equipped.

In many of the advertisements where a definite car was illustrated or described and a designated price featured, the car illustrated or described could not be purchased as equipped for the price quoted. Because of variance in the language used and the many different models of cars illustrated or described in respondents' advertisements an actual comparison of each model with the actual selling price is necessary to determine the correctness of the prices appearing in each advertisement. These advertisements may be roughly grouped into four general types, as follows:

(*a*) Where an automobile is illustrated, coupled with a definite and specified price without any qualification whatsoever.

(*b*) Where a fully equipped car is illustrated or described for sale to the public at a definite price in large figures, accompanied by such words as "And Up," "List Price" or "Accessories Extra" in very small lettering.

(*c*) This type of advertisement is similar to type (*b*), with the exception that immediately adjacent to the car so illustrated and priced in large figures appears a fine print legend setting out either the true price or a price much nearer the true price than the price set out in conjunction with the illustration in very large numerals.

(*d*) In some instances, a car is merely described as being for sale at a specified price and is not illustrated.

Analyses of the numerous advertisements of the respondents and said dissolved subsidiaries of the types hereinabove referred to, which are in evidence, and comparison of the same with the price lists in effect at the time these advertisements appeared show, and the Commission finds, that said respondents' pricing practices were misleading and deceptive, for the prices featured in such advertisements were not in fact the prices of the various cars illustrated or described, and the explanatory matter, when present, was either inadequate or so inconspicuous as to be of no value in removing or curing the inherent or deceptive tendencies present in respondents' advertisements.

PAR. 9. The effect of the advertisements used by the respondents as herein found was to convey to the purchasing public the impression that respondents' cars were obtainable at retail at prices much less than they were in fact obtainable; and through this means respondents attracted prospective purchasers, who might not otherwise consider purchasing the type of car thus advertised except for the low prices publicly quoted, into the show rooms of their retail dealers. Once the purchaser was interested in the car by personal inspection, the ultimate price was built up by additional charges until in some instances it was as much as five or six hundred dollars over and above what would appear to be the retail selling price of the car illustrated or described in respondents' advertising.

In some instances, no explanation at all appeared in the advertisement which would advise the most careful reader that the car illustrated could not be purchased for the price quoted. In other instances, the pictorial illustration of a higher priced car was shown in conjunction with the price of a cheaper car and the words "and up" were coupled with the price quoted, thus conveying the false impression that the car pictured was obtainable at the price featured but that more expensive models were available at a higher price.

In other cases, a price shown in large figures in conjunction with an illustration or description was qualified by another and higher price in very small figures placed in some inconspicuous location on the face of the advertisement. Sometimes the price set-out in this smaller lettering was true. Nevertheless, the testimony of the members of the public who appeared for the purpose of giving the impressions they gained from reading these advertisements demonstrated, and the Commission finds, that they expected to obtain the car illustrated at place of manufacture for the price emphasized in large figures plus actual transportation charges to the place of purchase.

In many instances, additional charges were made for accessories appearing on the car illustrated or described. The testimony of the members of the public who appeared shows, and the Commission finds, that they expected to purchase the car illustrated or described, equipped exactly as shown, for the price designated in large figures on the face of the advertisement. Small type expressions, appearing in such advertisements, such as "accessories extra," "white side wall tires extra," "fender wells extra," and "optional equipment extra" seemed to escape their attention entirely.

It is further found from the evidence that respondents have been adding to their advertised price certain charges for intangible items, among others, "delivery and handling charge," "advertising," "new car conditioning," and "factory handling charge." The public is deceived unless all such charges are included in the price of the car referred to when a price is named.

In addition to all the other charges added by respondents to their advertised prices, the evidence shows that an extra charge was generally made for Federal, State, and local taxes, or some of them. The total amount of these charges varies from State to State; it is difficult or impractical to include them in any price set forth in an advertisement of Nation-wide circulation. The Commission finds that failure of the respondents to give the public adequate notice that such items are in addition to the selling price stated, by appropriate explanation to that effect adjacent to the price quoted, constitutes a deception of the public.

PAR. 10. A great number of illustrations of specific instances where the price designated on a definite advertisement was not the true price of the car illustrated or described either at the factory or at the point of delivery of the car could be made from the advertisements and price lists in evidence in this case, but to do so would only extend these findings unnecessarily. However, the following instances are typical illustrations of respondents' practices, as hereinabove discussed. The Commission finds that in an advertisement illustrating a completely equipped 1936 Oldsmobile car there was conspicuously displayed a price of $675 unqualified by any other language at all on the face of the advertisement, and that the purchasing public was charged $901.50 for this car at the place of manufacture. This price was built up as follows:

List price of car illustrated	$820.00
Standard Accessories consisting of bumpers, bumper guards, spare tire and tube, metal spring covers (Note (a))	37.50

Factory handling charge	3.00
Federal taxes	22.25
Delivery and handling charge (which includes advertising)	17.25
Transportation	1.50
Retail price at place of manufacture	$901.50

((a) Other accessories available but not visible in the illustration, consisting of dual horns, extra windshield wiper, booster pump, oil bath air cleaner, and lacquered sheet metal, cost $23.50 more.)

The Commission finds that in this advertisement the public was deceived as to the price of the car illustrated to the extent of $226.50.

In another advertisement it is found that a Chevrolet Standard Sedan was illustrated, accompanied by a price of $465 in very large figures. Near the price featured, there appeared in small inconspicuous lettering the words "and up" followed in yet smaller lettering with the statements: "List price of new Standard Roadster at Flint, Mich., $465.00. With bumpers, spare tire, and tire lock, the list price is $20.00 additional." The Commission finds that the car illustrated in this advertisement actually cost the purchasing public at Flint, Mich., as follows:

List price of sedan illustrated	$550.00
Delivery and handling charge	16.90
New car conditioning	18.50
Spare tire, tube, lock and bumper guard	20.00
Total retail price	$605.40

The Commission finds that the roadster described in the fine print of the advertisement would have cost the public as follows:

List price of roadster at Flint	$465.00
Delivery and handling	15.90
New car conditioning	18.50
Spare tire, etc	20.00
Total retail price	$518.50

The Commission finds that in this advertisement the featured price in large figures, adjacent to the illustration, and the purported true price of the roadster illustrated which was set out in very fine print were both incorrect. The $465 price described as "list price" and advertised to the public as a retail price was not a retail price and conveyed a false impression to the purchasing public, because neither the car pictured nor any car referred to in fine print in said advertisement sold at retail for a price as low as $465.

It is found that in another advertisement published in 1939 in many newspapers having a general circulation, a Model 41 Buick Sedan was illustrated and that above and immediately adjacent to this illustration in very large numerals almost 2 inches high there appeared a price of $894. Underneath these figures in small letters appeared the words "And Up, Delivered in Flint, Mich.," and immediately beneath the illustration of the car in very small print appeared the statement "The Model Illustrated is the Buick Special Model 41, 4 Door Touring Sedan $996.00, Delivered at Flint, Michigan." The car in question did sell to the public at Flint, Michigan, for $996 as stated in fine print but that price was $102 more than the price featured in the large figures in the advertisement. The true price of the car in fine print was utterly submerged and obscured by the price appearing adjacent to the illustration in much larger and more conspicuous figures.

In an advertisement in which was illustrated a Cadillac Touring Sedan it is found that the price demonstrated in large figures was $1,445, accompanied by an asterisk leading to a statement in very fine print reading: "Price List at Detroit. Subject to change without notice. Special equipment extra." Another fine print statement beneath the car illustrated quoted the price of the car pictured as being $1,545 "Price List at Detroit." In fact, the car illustrated sold at Detroit for $1,660 which was $215 more than the price featured in large figures and $115 more than the price quoted in the fine print statement beneath the illustration.

The advertisement last above-mentioned also exemplifies very clearly the typical method used by the respondents by which the advertised price was built up by additional charges to create the ultimate selling price to the purchaser. The price featured in the large figures of $1,445 did not relate to the car illustrated but was the list price of a coupe which, if purchased, would cost the retail buyer at Detroit, Mich., as follows:

List price of coupe	$1,445.00
Accessory group	38.00
Handling and delivery	35.00
Federal taxes	38.75
Minus adjustment to create an even-money price to the consumer	(1.75)
Total retail price	$1,555.00

The actual selling price at Detroit, Mich., of the Cadillac car illustrated in this advertisement was made up as follows:

List price (as stated in fine print)	$1,545.00
Standard accessories	38.00
Delivery and handling	35.00
Federal taxes	41.00
Plus adjustment to create an even-money price	1.00
Actual retail price at place of manufacture	$1,660.00

In addition to the federal taxes added in making up the total retail price, State and local taxes were also added, although no notice to that effect was set forth on the face of the advertisement to put the buyer on notice of these additional charges.

These fine print prices which frequently appeared on respondents' advertisements in conjunction with an illustration of a car which also featured a price in very large figures were in many instances so small as to be practically illegible. A widely publicized advertisement of an Oldsmobile car, which appeared in 1939, is a typical illustration of this practice. In this instance it is found that the price of $777 appeared in very large figures immediately adjacent to the car illustrated, accompanied by the words "and up" in small lettering. By means of an asterisk, this price was connected with another fine print legend which advised that this was the "Delivered Price at Lansing, Michigan." The car illustrated was not sold to the public by respondents' dealers at Lansing, Mich., for $777, but for $889. The actual selling price of the car illustrated was shown in very fine print inconspicuously placed below the rear wheel of the car pictured.

It is found that in another typical advertisement illustrating a Buick car at the large print price of $765 "and up List at Flint," the small print price was $1,275 "List at Flint, Fender Wells Extra." The car illustrated retailed at Flint, Mich., for $1,457.65 which was $692.65 more than the large print price featured and $142.65 more than the fine print price, exclusive of the price of the fender wells.

As heretofore stated, the advertisements specifically mentioned are but typical illustrations of respondents' practices in advertising their passenger cars.

PAR. 11. The testimony of members of the purchasing public shows, and the Commission finds, that respondents' advertisements are misleading and deceptive and lead the public erroneously to believe that each of the cars illustrated or described can be purchased at the point of manufacture for the price featured in the advertisement and at points distant from the place of manufacture for the price featured in the advertisement plus cost of transportation to place of purchase.

PAR. 12. Certain competitors of respondents herein likewise engaged in the sale and distribution of passenger cars in commerce

between and among the several States of the United States and in the District of Columbia, who adopted and used advertising picturizations, descriptions, or representations of passenger cars so sold and distributed by them similar to those found to have been used by respondents herein, as more fully set forth in the preceding paragraphs, entered into stipulations and agreements with the Commission in 1937 not to represent, among other things, by picturization or description of a car in connection or conjunction with a designated price, that the car illustrated, including all equipment and accessories as illustrated and described or necessary for its operation, might be purchased at the price designated, unless the designated price is in fact the price of the car so pictured or described.

PAR. 13. The acts, practices, and methods of the respondents in using advertisements of the type hereinabove described in connection with the sale and distribution of said passenger motor vehicles in said commerce 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, and have induced, and now induce, a substantial portion of the purchasing public, because of said mistaken and erroneous belief engendered as aforesaid, to purchase a substantial volume of respondents' said passenger motor vehicles with the result that trade has been, and now is being, unfairly diverted to respondents from their competitors who truthfully advertise and represent the prices of their cars and sell them at the price published, represented, or designated by them.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the separate answers of respondents, testimony and other evidence taken before John W. Addison and John J. Keenan, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein by John Thomas Smith and Anthony J. Russo, counsel for the respondents,

and by James M. Hammond, counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that the said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, General Motors Corporation and General Motors 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 their automobiles, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(*a*) Representing as the price of any automobile, in or through the quotation of prices in connection with illustrations or descriptions of automobiles, or otherwise, in any advertisement promoting the sale of such automobile at retail, any price other than the true retail price of said automobile at the place designated for its sale, said retail price to include all charges for any equipment or accessories illustrated or described in said advertisement or necessary for said automobile's operation or customarily included as standard equipment, and any charge or charges whatsoever for advertising, delivery, handling, or for any similar or like purposes, or for any other purpose, except transportation charges where the automobile so advertised is transported from the point where advertised for sale to another or different point for delivery to a retail purchaser. The provisions of this subparagraph (*a*) are subject to the provisions of subparagraph (*c*) hereof with respect to taxes.

(*b*) Using a designated price in any advertisement illustrating an automobile offered for sale at retail, unless the true retail price, as defined in subparagraphs (*a*) and (*c*) hereof, of the automobile illustrated is set out in juxtaposition thereto in words or figures equal in size and conspicuousness to the words or figures designating the price of any other automobile referred to in said advertisement.

(*c*) Advertising automobiles for sale at retail at a designated price, unless the said retail price includes all Federal, State, and local taxes, or unless the advertisement clearly and legibly states, immediately adjacent to the price quoted, that the price is subject to additional charges for Federal, State, or local taxes, or any of them, as the case may be.

(*d*) Advertising or representing an automobile as being for sale at retail at a designated price unless such automobile is in fact made available and sold to the public, at the point specified, for the price stated, or at a point distant therefrom for the price stated plus trans-

portation charges thereto. This paragraph is subject to the provisions of subparagraph (*c*) hereof regarding taxes.

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 COAL CARBURETOR COMPANY, AND THORNTON W. PRICE, INDIVIDUALLY AND AS PRESIDENT THEREOF

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

Docket 4070. Complaint, Mar. 20, 1940—Decision, Mar. 5, 1941

Where a corporation engaged in manufacture of its "Coal Carburetor" equipment to facilitate combustion of coal and gases in coal burning furnaces and in interstate sale and distribution thereof, and an individual who was its president and dictated its business policies, and had been owner of said business prior to such corporation; in advertising material circulated to purchasers and prospective purchasers—

(*a*) Represented or implied that said "Coal Carburetor" was officially indorsed by the United States Government, and that use thereof was advocated and approved by the United States Bureau of Mines and indorsed and approved by public health authorities and other recognized health groups or organizations; facts being it had not been officially indorsed by the Government or by any of the branches thereof, or otherwise, as above set forth; and

(*b*) Represented that it was the most efficient means known for producing heat from coal, and that such efficiency had been established by comparative tests with other equipment and devices designed for same general purposes; facts being any such claim was greatly exaggerated and not based on any known facts or upon any such comparative tests;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of their said "Coal Carburetor" into the erroneous belief that such representations were true, and thereby induce their purchase thereof:

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

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

Mr. R. P. Bellinger for the Commission.

Mr. Henry S. Thomas, of New Brunswick, N. J., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Coal Carburetor Co., a corporation, and Thornton W. Price, individually and as president 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, The Coal Carburetor 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 on Woodbridge Avenue, in the city of New Brunswick, State of New Jersey. Respondent, Thornton W. Price, is the president of said corporate respondent.

PAR. 2. Respondent, The Coal Carburetor Co., is now and has been since February 23, 1939, engaged in the manufacture of certain equipment designated and described as "Coal Carburetor," which is designed for the purpose of facilitating the combustion of coal and gases incident thereto in coal burning furnaces to which said equipment is attached, and in the sale and distribution of said equipment in commerce between and among the various States of the United States. Said respondent, in the course and conduct of its business during the time aforesaid, caused and does now cause its said equipment to be transported from its place of business in New Jersey to, into and through States of the United States other than New Jersey to the purchasers thereof in such other States.

PAR. 3. Said individual respondent, Thornton W. Price, as president of said corporation, is, and has been, its directing head and dictates and controls its business policies with respect to the acts and practices hereinafter set forth. Immediately prior to the operation of said business by said corporate respondent, it was operated by respondent, Thornton W. Price, as owner thereof, under the trade name "The Coal Carburetor Company." Prior to said individual ownership, the business was operated by a corporation of the same name as the present corporate respondent with said Thornton W. Price as president and directing head.

PAR. 4. Respondents, in the sale of said equipment as aforesaid, have made various misleading representations in advertising material circulated to purchasers and prospective purchasers of said equipment which represent or imply that the said "Coal Carburetor" is officially endorsed by the United States Government; that its use is advocated and approved by the United States Bureau of Mines; that it is endorsed and approved by Public Health authorities or other recognized health groups or organizations; that it is the most efficient means known for producing heat from coal and that such efficiency has been established by comparative tests with other equipment and devices designed for the same general purpose.

Examples of statements made by respondents in advertising literature as aforesaid are the following:

Coal Carburetor is endorsed by its many users, including U. S. Government.
Advocated by U. S. Bureau of Mines as to basic principle of combustion.
Endorsed by Health Authorities as to maintenance of even temperatures.
Many Laboratory and Comparative Tests have proven Coal Carburetor the most efficient means known today for producing heat from coal.

PAR. 5. In truth and in fact said equipment has not been officially endorsed by the United States Government or by any of its branches. Its use has not been advocated nor has it been approved by the United States Bureau of Mines. It has not been endorsed or approved by any Public Health authority or other recognized health group or organization. Any claim that said equipment constitutes the most efficient means known for producing heat from coal is greatly exaggerated and is not based on any known fact or facts or upon comparative tests made in conjunction with other equipment or devices designed and intended for the same general purpose.

PAR. 6. The aforesaid acts and practices used by respondents in connection with the offering for sale and sale of said "Coal Carburetor" 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 such equipment on account thereof.

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 March 1940, issued, and on the 22d day of March 1940, served, its complaint in this proceeding upon the respondents, Coal Carburetor Co., a corporation, and Thornton W. Price, individually and as president of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 12, 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 the respondents and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may

be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, 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 correct corporate name of the respondent named in the complaint as The Coal Carburetor Co. is Coal Carburetor Co., and said respondent 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 in the city of New Brunswick, State of New Jersey. Respondent Thornton W. Price is the president of said corporate respondent, for which corporation a receiver was appointed by the New Jersey Court of Chancery in September 1939, but which has not been formally and legally dissolved as a corporate entity.

PAR. 2. Respondent, Coal Carburetor Co., is now and has been since February 23, 1939, engaged in the manufacture of certain equipment designated and described as "Coal Carburetor," which is designed for the purpose of facilitating the combustion of coal and gases incident thereto in coal burning furnaces to which said equipment is attached, and in the sale and distribution of said equipment in commerce between and among the various States of the United States. Said respondent, in the course and conduct of its business during the time aforesaid, caused and does now cause its said equipment to be transported from its place of business in New Jersey to, into, and through States of the United States other than New Jersey to the purchasers thereof in such other States.

PAR. 3. Said individual respondent, Thornton W. Price, as president of said corporation, was its directing head and dictated and controlled its business policies with respect to the acts and practices hereinafter set forth. Immediately prior to the operation of said business by said corporate respondent, it was operated by respondent, Thornton

W. Price, as owner thereof, under the trade name "The Coal Carburetor Company." Prior to said individual ownership, the business was operated by a corporation of the same name as the present corporate respondent with said Thornton W. Price as president and directing head.

PAR. 4. Respondents, in the sale of said equipment as aforesaid, have made various misleading representations in advertising material circulated to purchasers and prospective purchasers of said equipment which represent or imply that the said "Coal Carburetor" is officially endorsed by the United States Government; that its use is advocated and approved by the United States Bureau of Mines; that it is endorsed and approved by Public Health authorities or other recognized health groups or organizations; that it is the most efficient means known for producing heat from coal and that such efficiency has been established by comparative tests with other equipment and devices designed for the same general purpose.

Examples of statements made by respondents in advertising literature as aforesaid, are the following:

Coal Carbuetor is endorsed by its many users, including U. S. Government.
Advocated by U. S. Bureau of Mines as to basic principle of combustion.
Endorsed by Health Authorities as to maintenance of even temperatures.
Many Laboratory and Comparative Tests have proven Coal Carburetor the most efficient means known today for producing heat from coal.

PAR. 5. In truth and in fact said equipment has not been officially endorsed by the United States Government or by any of its branches. Its use has not been advocated nor has it been approved by the United States Bureau of Mines. It has not been endorsed or approved by any Public Health authority or other recognized health group or organization. Any claim that said equipment constitutes the most efficient means known for producing heat from coal is greatly exaggerated and is not based on any known fact or facts or upon comparative tests made in conjunction with other equipment or devices designed and intended for the same general purpose.

PAR. 6. The aforesaid acts and practices used by respondents in connection with the offering for sale and sale of said "Coal Carburetor" have had the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations, as herein stated are true, and to induce them to purchase such equipment on account thereof.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents and a stipulation as to the facts entered into between 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, Coal Carburetor Co., a corporation, its officers, agents, representatives, servants, and employees, and Thornton W. Price, his agents, representatives, servants, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of equipment designed for the purpose of facilitating the combustion of coal and gases in furnaces and designated as "Coal Carburetor," in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that said equipment designated as "Coal Carburetor" has been endorsed, approved, or recommended by the United States Government or any of its branches, departments, bureaus, or agencies; or that its use has been advocated or approved by the United States Bureau of Mines; or that it has been endorsed, approved or recommended by any public health authority or any other recognized group, association, or organization for the advancement, promotion, protection or preservation of health.

2. Representing that "Coal Carburetor" is the most efficient means known for producing heat from coal or that such efficiency has been established by comparative tests with other equipment and devices

designed for the same general purpose, unless and until the truth of such representation has been actually established by such tests.

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

IN THE MATTER OF

RUTH GOWNS, INC.

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

Docket 4426. Complaint, Dec. 20, 1940—Decision, Mar. 5, 1941

Where a corporation engaged in manufacture of various grades and types of dresses and other wearing apparel for women, and in interstate sale and distribution of such products, including various garments made in whole or in part of rayon, which, when so manufactured as to simulate silk, has appearance and feel thereof and is by purchasing public practically indistinguishable therefrom, and, when manufactured as aforesaid and not designated as rayon, is believed and accepted by a portion of purchasing public as being silk, product of cocoon of silkworm; in connection with sale in commerce of its said last-named products or garments—

Made no disclosure by tag, label, or advertising, or otherwise than in invoicing, or at all in some instances, of rayon content of said garments which, composed entirely of said chemically manufactured fiber or fabric, but with appearance and feel of silk, were accordingly sold through wholesalers, jobbers and retailers to purchasing public with no disclosure of rayon content thereof;

With result of placing in hands of uninformed or unscrupulous jobbers, wholesalers, and retailers means and instrumentality whereby they might deceive or mislead members of purchasing public into erroneous and mistaken belief that in purchasing aforesaid rayon garments they were buying those made from silk, and with tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that they were composed of silk, product of cocoon of silkworm, products of which have long been held in great public esteem and confidence for the preeminent qualities thereof, and with result, as consequence thereof, that number of consuming and purchasing public bought its said products in substantial volume:

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.

Wachtell, Manheim & Grouf, 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 Ruth Gowns, 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, Ruth Gowns, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 498 Seventh Avenue in the city and State of New York.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the business of manufacturing, selling, and distributing various grades and types of dresses and other wearing apparel for women.

Respondent causes said 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 substantial 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 said business and for the purpose of inducing the purchase of its products, respondent has engaged in the practice of falsely representing the constituent fiber or material of which the dresses and other articles of wearing apparel for women sold and distributed by it, are made. Such representations are made by means of tags, labels, price lists, and invoices, as well as in various advertising material, through statements made by respondent's representatives to purchasers and prospective purchasers, and by respondent's failure to disclose the rayon content of, certain of its products.

PAR. 4. Among and typical of the acts and practices above described, the respondent represents certain of its fabrics as being composed of silk, the product of the cocoon of the silk worm. As an example of this practice, respondent places, or causes to be placed, on price lists and invoices, and in various advertising circulars and other printed matter the following terms or similar terms:

Tie Silk Taffeta Dress

and other words and terms indicative of silk, as descriptive of the material from which its products are made. By these means respondent represents that the fabrics so described are composed of silk,

the product of the cocoon of the silk worm, when in truth and in fact said products are composed in whole or in part of rayon.

Among and typical of respondent's practices of failing to disclose the fabric content of its products is the following: In a large portion of respondent's sales no indication of the fabric content of its products is made by tag, label, on invoices, in advertising, or by any other means. A large portion of respondent's products which have the appearance and feel of silk but are composed entirely of rayon are therefore sold through wholesalers, jobbers, and retail dealers to the purchasing public without any disclosure being made of the rayon content of said products.

PAR. 5. Over a period of many years the word silk has had and still has, in the minds of the purchasing and consuming public generally, a definite and specific meaning as denoting the product of the cocoon of the silk worm. Silk products for many years have held and still hold great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics and a number of distinctive terms indicative of silk have been applied to the fabrics resulting from the different types of weaving of silk fiber. Among such terms is the word "taffeta." Dress goods and other items of women's wearing apparel designated, described and referred to by the term "taffeta," and other words indicative of silk have been for a long time and at the present time still are, associated in the public mind with fabrics made from silk, the product of the cocoon of the silk worm. Whenever the term "taffeta" or other words or terms indicative of silk are used to describe or refer to dress goods or other items of women's apparel, and such terms are not immediately accompanied by other terms or words adequately and accurately naming the fibers of which such materials are made, such terms are understood by members of the purchasing public as designating, describing, and referring to materials made from silk, the product of the cocoon of the silk worm.

PAR. 6. Rayon is a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk, and when so manufactured it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities, rayon, when manufactured to simulate silk and not designated as rayon, is readily believed and accepted by the purchasing public as being silk, the product of the cocoon of the silk worm.

By the use of the various practices herein set forth of designating respondent's products which are composed of rayon with names which are indicative of and associated by the purchasing public

with silk products, and by the failure to indicate or disclose the rayon content of its products, the respondent places in the hands of uninformed or unscrupulous jobbers, wholesale dealers and retail dealers a means and instrumentality whereby said jobbers, wholesale dealers, and retail dealers may and do deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing garments or material manufactured from silk, when such garments or material are in fact manufactured and composed entirely of rayon.

PAR. 7. The use by the respondent of the aforesaid acts and practices, including the failure to disclose that its products are made of rayon, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's products are composed of silk, the product of the cocoon of the silkworm. On acount of this erroneous belief a number of the consuming and purchasing public purchases a substantial volume of respondent's products.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 20th day of December 1940, issued and subsequently served its complaint in this proceeding upon said respondent, Ruth Gowns, 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 January 10, 1941, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent's counsel, Wachtell, Manheim & Grouf, 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. Counsel for the respondent 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ruth Gowns, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 498 Seventh Avenue in the city and State of New York.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the business of manufacturing, selling, and distributing various grades and types of dresses and other wearing apparel for women.

Respondent causes said products, when sold, to be transported from its place of business in the State of New York 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 substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. Among the products so sold by respondent are various garments made, in whole or in part, of rayon.

PAR. 3. In the course and conduct of its said business and in connection with the sale of its rayon products, respondent has engaged in the following practice: in the rayon garments sold by respondent in commerce as described in paragraph 2 hereof no disclosure of the rayon content thereof was made by tag, label, in advertising, or otherwise except in invoicing and in some instances no such disclosure was made even in invoices.

PAR. 4. Respondent's above described products have the appearance and feel of silk but are composed entirely of rayon and therefore are sold through wholesalers, jobbers, and retail dealers to the purchasing public without any disclosure being made of the rayon content of said products.

PAR. 5. Over a period of many years the word silk has had and still has, in the minds of the purchasing and consuming public generally, a definite and specific meaning as denoting 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.

PAR. 6. Rayon is a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk, and when so manufactured it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities, rayon, when manufactured to simulate silk and not designated as rayon, is believed and accepted by a portion of the purchasing public as being silk, the product of the cocoon of the silkworm.

By the use of the practice herein set forth of failing to disclose the rayon content of such portion of its products, the respondent places in the hands of uninformed or unscrupulous jobbers, wholesale dealers, and retail dealers a means and instrumentality whereby said jobbers, wholesale dealers, and retail dealers may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing garments manufactured from silk, when such garments are in fact manufactured and composed entirely of rayon.

PAR. 7. The Commission further finds that respondent's failure to disclose by tag or label that its rayon products are in fact made of rayon has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's products are composed of silk the product of the cocoon of the silkworm. On account of this erroneous belief a number of the consuming and purchasing public purchases a substantial volume of respondent's products.

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, the answer of the respondent, and a stipulation as to the facts entered into between the respondent's counsel Wachtell, Manheim & Grouf, 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 Ruth Gowns, Inc., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of its dresses and other wearing apparel for women in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, offering for sale, or selling fabrics, garments, or other products composed in whole or in part of rayon without clearly disclosing the fact that such fabrics or products are composed of rayon and when such fabrics or products are composed in part of rayon and in part of other fibers or materials, all of such fibers or materials, including the rayon, shall be set forth in immediate connection with each other in letters of at least equal size and conspicuousness and shall truthfully describe and designate each constituent fiber or material thereof.

2. Representing in any manner or by any means that respondent's products are composed of fibers or materials other than those of which such products are actually composed.

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

SCHUTTER 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 3636. Complaint, Oct. 26, 1938—Decision, Mar. 6, 1941

Where a corporation engaged in the manufacture of candy, and in sale and distribution of various assortments, including as typical, assortment which (1) was composed of 126 small pieces of individually wrapped candy of uniform size and shape, of light color and vanilla flavor, 24 similar individually wrapped small pieces of dark color and chocolate flavor, and 25 5-cent candy bars, so packed that said 24 chocolate colored pieces were contained in small cardboard tray on top of others, with legend advising said 24 pieces were "For those who like chocolate * * *," and that segregation of said otherwise indistinguishable 24 pieces was lost through simple expedient of emptying tray into lower compartment, (2) was customarily sold by retailers under plan whereby purchaser selecting by chance, for cent paid, one of light colored pieces received such piece only, while person thus selecting one of chocolate colored pieces received one of said candy bars, and purchaser of last piece of candy received 25th or last bar and (3) was similar to other "draw" and "break and take" assortments, sold principally by retailers near schools to children, purchasers and consumers in substantial number of such type of candy, well-known in candy industry and readily recognized, in case of assortment in question, as a "draw" or "break and take" one, with no explanation required as to manner of operation by retailer—

Sold its said "Bingo Country Store Advertising Deal" assortments to jobbers and wholesalers, by whom they were distributed and sold to retailers as "draw" and "break and take" assortments, and by retail dealer purchasers were exposed and sold to purchasing public in accordance with sales plan or method above described, involving game of chance or sale of a chance to procure piece of candy at much less than the normal retail price, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its candy, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with those who are opposed to, and do not use, same or any sales plan or method involving game of chance or sale of a chance to win or plan contrary to public policy of the Government, and are thereby put to competitive disadvantage;

With the result that many persons were induced by said plan or method and element of chance involved therein to buy and sell its products in preference to those offered and sold by its said competitors, and substantial trade in commerce was unfairly diverted to it from them:

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.
Pennish & Rashbaum, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Schutter Candy Co., 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. The respondent, Schutter Candy Co., is a corporation organized and doing business under the laws of the State of Delaware, with its principal offices and place of business located at 1013 North Cicero Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused its products, when sold, to be shipped or transported from its aforesaid place of business in the State of Illinois 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 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 its business respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy in commerce between and among the various States of the United States 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 various assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner:

This assortment consists of a number of small bars of candy of uniform size and shape, and a number of large bars of candy. The said large bars of candy are to be given as prizes to purchasers of certain of said small bars of candy, as follows: The majority of said small bars of candy of uniform size and shape in said assortment are of the same

color, but the minority of said small bars of candy of uniform size and shape have a different color. The said small bars of candy of uniform size and shape retail at 1 cent each, but the purchasers procuring small bars of the minority portion of candy bars are entitled to and are given, without charge, said large bars of candy. The purchaser of the last bar of said small bars of candy is entitled to receive and is given, without charge, one of said large bars of candy. The colors of the minority portion of said small bars of candy are effectively concealed from purchasers and prospective purchasers until a purchase is made and the small bar unwrapped. The said large bars of candy are thus distributed to the purchasing public wholly by means of lot or chance.

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 plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. 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 its 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 additional bars of candy without additional cost. 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 in violation of the criminal laws. The use by respondent of said method has a tendency unduly to hinder competition or to create a monopoly in that the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not use and adopt the same method 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 alleged, and thereby are 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 sales plans or methods. The use of said method by respondent has a tendency and capacity, because of said game of chance, to unfairly divert to respondent trade and custom from its competitors who do not use the same or equivalent methods; to exclude from the candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in the candy trade; to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or 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 and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 26, 1938, issued and thereafter served its complaint in this proceeding upon respondent Schutter 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 (respondent having filed no answer thereto), testimony, and other evidence in support of the allegations of the complaint were introduced by counsel for the Commission and in opposition to the allegations of the complaint by counsel 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, 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, Schutter Candy Co., is a corporation organized, existing, and doing business under the laws of the State of Delaware with its principal office and place of business located at 1013 North Cicero Avenue, Chicago, Ill. Respondent is now, and for more than 25 years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to jobbers at their respective places of business located in the various States of the United States. Respondent causes and has caused said candy, when sold, to be shipped or transported to said purchasers from its said place of business in the State of Illinois. There is now, and for more than 25 years 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.

PAR. 2. In so carrying on said business as described in paragraph 1 hereof, respondent manufactured, sold, and distributed an assortment known as "Bingo Country Store Advertising Deal" from about the middle of April 1938 until November 1938. This assortment consisted of 150 small pieces of candy of uniform size and shape and 25 5-cent bars of candy. One hundred twenty-six of said small pieces of candy were of a light color and vanilla flavor; the remaining 24 of said small pieces of candy were of a dark color and chocolate flavor. Said small pieces of candy were all individually wrapped in wrappers on which there were no indications as to the colors of the said pieces of candy, thereby making it impossible to determine the colors of the pieces of candy until the wrappers were removed therefrom. The said pieces and bars of candy were all contained in one carton. The 25 bars of candy were placed in the center of the carton. On one side of the bars were placed 75 of said 126 pieces of candy. On the other side of said bars were placed the remaining 51 of said 126 pieces of candy, and immediately on top of said 51 pieces of candy were placed the said 24 chocolate colored pieces of candy which were contained in a small cardboard tray. On the top of the tray there appeared the following:

For those who like chocolate 24 chocolate bars in this tray.

Since all of the 150 pieces of candy were wrapped in identical wrappers, it was only necessary that said tray, on which appears the state-

ment "For those who like chocolate 24 chocolate bars in this tray," be removed from said carton and the 24 chocolate colored pieces of candy contained in said tray emptied into said carton and mixed with said 126 pieces of candy to make it impossible for a purchaser to ascertain the color of a piece of said candy without first removing the wrapper therefrom.

In the candy industry assortments such as the one hereinabove described are customarily sold by retail dealers in the following manner: Sales are 1 cent each. Each purchaser selecting one of said light-colored pieces of candy receives only such piece of candy for his 1 cent. Purchasers selecting one of the 24 chocolate colored pieces of candy are entitled to and receive one of said bars of candy and the purchaser of the last piece of candy in the assortment receives the 25th of said bars of candy. Purchasers and prospective purchasers are not able to determine the colors of the individual pieces of candy until said pieces of candy have been purchased and the wrappers removed therefrom. Said bars of candy are thus distributed to the purchasing public wholly by lot or chance.

Respondent has sold and distributed various other assortments of candy like or similar to said "Bingo Country Store Advertising Deal" assortment, but the sales plan or method involved in connection with each of said assortments was similar to the one hereinabove described, varying only in detail. Respondent sold a substantial number of cartons of said "Bingo Country Store Advertising Deal" assortment all of which were packed and assembled as above described.

PAR. 3. Candy assortments involving the chance or lot features as described in paragraph 2 hereof, are generally referred to in the candy trade or industry as "draw" or "break and take" assortments. Assortments of candy without any lot or chance feature in connection with their resale to the public are generally referred to in the candy trade or industry as "straight" merchandise. These terms will be used hereinafter to distinguish the various types of assortments. The "draw" or "break and take" assortments are sold principally by retail dealers located near schools to children who comprise a substantial number of the purchasers and consumers of this type of candy.

PAR. 4. Respondent's, "Bingo Country Store Advertising Deal" assortment is similar to other "draw" and "break and take" assortments which are well known in the candy industry. The contents of said "Bingo Country Store Advertising Deal" assortment are such that such assortment is readily recognized by candy dealers as a "draw" or "break and take" assortment and it is not necessary that the manner in which such assortment is to be operated as a "break and take" or "draw" assort-

ment by the retail dealers be explained to candy dealers because such fact is obvious from the make-up and contents of the assortment. Said assortment was in fact distributed by wholesale dealers and jobbers as a "draw" or "break and take" assortment and in turn was sold to the retail trade as a "draw" or "break and take" assortment.

PAR. 5. The Commission finds that retail dealers who purchased respondent's said "Bingo Country Store Advertising Deal" assortment exposed and sold the same to the purchasing public in accordance with the sales plan or method described in paragraph 2 hereof. Respondent thus supplied to, and placed in the hands of, others a means of conducting lotteries in the sale of its candy in accordance with the sales plan or method described in paragraph 2 hereof. The use by respondent of said sales plan or method 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 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 the criminal laws.

PAR. 6. The Commission finds that the sale of said products in the manner above described involves a game of chance or the sale of a chance to procure a piece of candy at a price much less than the normal retail price thereof. Respondent has competitors who sell and distribute like or similar products in commerce between and among various States of the United States but who are opposed to the use of said sales plan or method in the sale of their said merchandise and who do not use said sales plan or method or any other sales plan or method involving a game of chance or the sale of a chance to win something thereby, or any other sales plan or method which is contrary to the public policy of the Government of the United States, and such competitors refrain from the use of such sales plan or method in the sale of their merchandise in commerce between and among the various States of the United States. Such competitors are thereby put to a competitive disadvantage. 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 products in preference to the products offered for sale and sold by its said competitors. As a result thereof, substantial trade has been unfairly diverted to respondent from its said competitors 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 (respondent having filed no 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 and in opposition thereto, briefs filed herein and oral argument by D. C. Daniel, counsel for the Commission, and Lewis E. Pennish, 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, Schutter Candy Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of candy or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Selling or distributing any merchandise so packed and assembled that sales thereof 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, packages or assortments of candy which are to be used or may be used to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of said candy contained in said packages or assortments to the public.

3. Supplying to, or placing in the hands of, others for sale to the public assortments of candy, whether contained in one or more than one package, composed of different colored pieces of candy of uniform size and shape individually wrapped in opaque wrappers, and larger pieces of candy or other merchandise, which said larger pieces of candy or other merchandise are to be given or may be given as prizes to the purchasers procuring pieces of candy of a particular color.

4. Supplying to, or placing in the hands of, others any lottery device, which device is to be used or may be used in selling or dis-

tributing respondent's merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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 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

NATIONAL MINERAL COMPANY, TRADING AS HELENE CURTIS INDUSTRIES

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

Docket 4185. Complaint, July 12, 1940—Decision, Mar. 12, 1941

Where a corporation engaged in competitive interstate sale and distribution of two products respectively designated as "Helene Curtis Duchess Machineless Oil Wave," or "Helene Curtis Duchess Machineless Oil Solution," and "Helene Curtis Duchess Machineless Pads"; by advertisements disseminated through the mails, in trade journals and other periodicals, and by circulars, pamphlets, and other advertising literature—

(*a*) Represented, directly or through implication, that its said oil preparation supplied nourishment to the hair, imparted strength and vigor thereto and caused growth thereof, that it nourished and invigorated the hair roots and hair shaft, and that it was the original machineless oil wave, facts being said oil preparation was not capable of supplying any nourishment, strength or vigor to the hair, hair roots or hair shaft, nor of causing the growth of hair, and it was not the original machineless oil wave;

(*b*) Represented, as aforesaid, that its said pads were equipped with a thermostatic device which controlled and regulated heat, facts being the device on said pads was not thermostatic, but only thermoscopic and merely indicated changes in temperature and would not control or regulate heat; and

(*c*) Represented that it made the products it sold, through such statements as "Manufactured by National Mineral Co. * * * World's largest manufacturer of products for the beauty shop," facts being it did not manufacture its solution, but only the pads aforesaid, and was not such a manufacturer, preferentially dealt with directly on part of substantial portion of purchasing public as affording, in its belief, lower prices, superior quality, and other advantages;

With capacity and tendency to mislead and deceive members of purchasing public into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of its said products because of such belief, with result that trade was diverted unfairly to it from its competitors:

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

Mr. R. P. Bellinger for the Commission.

Mr. Adolph A. Rubinson, 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 National Mineral Co., a corporation, trading as Helene Curtis Industries, 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 Mineral Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, trading as Helene Curtis Industries, with its office and principal place of business located at 3633 South Racine Avenue, Chicago, Ill.

PAR. 2. Respondent is now and for more than 3 years last past has been engaged in the sale and distribution of a cosmetic product designed for curling or waving the hair and designated "Helene Curtis Duchess Machineless Wave." Said product consists of an oil preparation designated "Helene Curtis Duchess Machineless Oil Solution" and pads designated "Helene Curtis Duchess Machineless Pads."

Respondent causes and at all times mentioned herein has caused its said products, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in its 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 business as aforesaid, respondent is in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the sale and distribution of similar cosmetic products, or of other products designed and used for similar purposes, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its 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 trade journals and other periodicals and by circulars, pamphlets, and other advertising literature, are the following:

Helene Curtis Duchess Machineless Oil Solution * * * the beneficial oil and vitamin content revitalize and invigorate the scalp roots and hair shaft to give lustre, sheen and matchless beauty.

Helene Curtis introduces the first, the original machineless oil wave * * * only Duchess solutions contain the oil and vitamin elements which, by bathing the hair strand in a protective film and nourishing the hair roots, supply the matchless results which will bring you greater fame and profit.

Hair glows with new health.

Only Duchess Solutions contain the oil and vitamin elements which can supply this matchless beauty.

The Helene Curtis Duchess Pad with its thermostatic control indicator.

Manufactured by National Mineral Company * * * World's largest manufacturer of products for the beauty shop.

PAR. 5. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents and has represented directly or through inference that its oil preparation supplies nourishment to the hair and imparts strength and vigor to the hair and causes the growth of hair; that it nourishes and invigorates the hair roots and hair shaft; that said oil preparation is the original machineless oil wave. Respondent also represents that its said pads are equipped with a thermostatic device which controls and regulates heat. Respondent further represents that its said products are manufactured by it.

PAR. 6. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's oil preparation is wholly incapable of supplying any nourishment to the hair or imparting strength or vigor to the hair or causing the growth of hair. It does not nourish or invigorate the hair roots or hair shaft. It is not the original machineless oil wave. The device on respondent's pads is not in fact a thermostatic device and will not

control or regulate heat. Said device is in fact only a thermoscopic device which merely indicates changes in temperature. Respondent does not manufacture either of its said products but obtains them from other sources.

PAR. 7. There is a preference on the part of a substantial portion of the purchasing public for dealing direct with manufacturers, such preferences being due in part to a belief that thereby lower prices, superior quality and other advantages may be obtained.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations, disseminated as aforesaid, 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 said statements and representations are true, and into the purchase of substantial quantities of respondent's said products because of said erroneous and mistaken belief. As a result thereof, trade has been diverted unfairly to the respondent from its said competitors, and in consequence substantial injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 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 12th day of July 1940, issued, and on the 16th day of July 1940, served, its complaint in this proceeding upon the respondent, National Mineral Co., a corporation, trading as Helene Curtis Industries, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 7, 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 through its counsel, Adolph A. Rubinson, Esq., and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts

in the 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, National Mineral Co., is a corporation, organized, existing and doing business under the laws of the State of Illinois, trading as Helene Curtis Industries, with its principal place of business located in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of two products, one designated as "Helene Curtis Duchess Machineless Oil Wave" and "Helene Curtis Duchess Machineless Oil Solution," the other as "Helene Curtis Duchess Machineless Pads." Respondent causes, and at all times mentioned herein has caused, its said products, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its 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 business as aforesaid, respondent is in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the sale and distribution of similar products or of other products designed and used for similar purposes, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business the respondent has disseminated, and has caused 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 has caused 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 misrepresentations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements in trade journals and other periodicals, and by circulars, pamphlets, and other advertising literature, are the following:

Helene Curtis Duchess Machineless Oil Solution * * * the beneficial oil and vitamin content revitalize and invigorate the scalp roots and hair shaft to give lustre, sheen and matchless beauty.

Helene Curtis introduces the first, the original machineless oil wave * * * only Duchess solutions contain the oil and vitamin elements which, by bathing the hair strand in a protective film and nourishing the hair roots, supply the matchless results which will bring you greater fame and profit.

Hair glows with new health.

Only Duchess Solutions contain the oil and vitamin elements which can supply this matchless beauty.

The Helene Curtis Duchess Pad with its thermostatic control indicator.

Manufactured by National Mineral Company * * * World's largest manufacturer of products for the beauty shop.

PAR. 5. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents and has represented, directly or through inference, that its oil preparation supplies nourishment to the hair and imparts strength and vigor to the hair and causes the growth of hair; that it nourishes and invigorates the hair roots and hair shaft; that said oil preparation is the original machineless oil wave. Respondent also represents that its said pads are equipped with a thermostatic device which controls and regulates heat. Respondent further represents that its said products are manufactured by it.

PAR. 6. The foregoing representations are exaggerated, false and misleading. In truth and in fact respondent's oil preparation is not capable of supplying any nourishment to the hair or imparting strength or vigor to the hair, or causing the growth of hair; it does not nourish or invigorate the hair roots or hair shaft, and it is not the original machineless oil wave. The device on respondent's pads is not in fact a thermostatic device and will not control or regulate heat. Said device is in fact only a thermoscopic device which merely

indicates changes in temperature. Respondent does not manufacture its oil solution, but only the machineless pads.

PAR. 7. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with manufacturers, such preference being due in part to a belief that thereby lower prices, superior quality, and other advantages may be obtained.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations, disseminated as aforesaid, has had the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and into the purchase of substantial quantities of respondent's said products because of said erroneous and mistaken belief. As a result thereof, trade has been diverted unfairly to the respondent from its said competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, National Mineral Co., a corporation, trading as Helene Curtis Industries, 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 cosmetic oil variously designated as "Helene Curtis Duchess Machineless Oil Wave," and as "Helene Curtis Duchess Machineless Oil Solution," and its cosmetic device known as "Helene

Curtis Duchess Machineless Pads," or any other preparation or product of substantially similar composition or 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 by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference—

(*a*) That respondent's cosmetic preparation designated as "Helene Curtis Duchess Machineless Oil Wave" and as "Helene Curtis Duchess Machineless Oil Solution" has any properties which are effective in supplying nourishment or strength to the hair, or causing hair to grow; that said preparation will nourish or invigorate the hair roots or hair shaft; that said preparation is the original machineless oil wave; that said preparation is manufactured by respondent, unless and until respondent owns or directly and absolutely controls a plant or factory herein said preparation is manufactured.

(*b*) That respondent's device designated as "Helene Curtis Duchess Machineless Pads" contains a thermostatic device, or that said device will control or regulate heat, or do more than indicate temperature changes.

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 cosmetic oil variously designated as "Helene Curtis Duchess Machineless Oil Wave," and as "Helene Curtis Duchess Machineless Oil Solution," or its device designated as "Helene Curtis Duchess Machineless Pads," which advertisement contains 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

VICTORIA CHEMICAL COMPANY, SCHWARZ DRUGGIST, INC., SCHWARZ DRUG COMPANY, SCHWARZ DRUG STORES, INC., HIRAM SCHWARZ, 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 4403. Complaint, Dec. 6, 1940—Decision, Mar. 12, 1941

Where five corporations, with principal offices and places of business, as case might be, in Newark and Bloomfield, N. J., and White Plains, N. Y., and nine individuals, who were general officers of one or more of said corporations and formed their policies and directed and controlled their acts and practices, engaged in compounding, and in interstate sale and distribution of, their "Anti-Drink" drug-containing medicinal preparation, and cooperating in carrying out acts and practices below set forth; in advertisements which they disseminated and caused to be disseminated through the mails, in newspapers and periodicals, and through pamphlets, circulars, and other advertising matter, and by various other means in commerce and otherwise—

(*a*) Represented, directly or by implication, that their said "Anti-Drink" preparation was a cure or remedy and competent and effective treatment for alcoholism and the liquor habit, through use of which desire for alcoholic stimulants was eradicated, and that such preparation was safe for use;

Facts being it was neither a cure or remedy nor competent or effective treatment for said condition or habit, and would not eradicate desire for said stimulants, and was not safe for use, by virtue of tartar emetic content in quantity sufficient to cause serious injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and thus used, might result in inflammatory disturbances of the stomach and intestinal tract, excessive depression of the cardio-vascular system and metabolic disturbances arising from the central nervous system; and

(*b*) Failed to reveal facts material in the light of the representations contained in their said advertisements, and that use of their said product under the conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in serious injury to the stomach, intestinal tract, heart, and nervous system;

With the effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false advertisements were true, and of inducing such public to purchase substantial quantities of their said product as result 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.

Mr. Jesse D. Kash for the Commission.

Mr. Bertram S. Grand and *Mr. Michael Sokol*, 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 Victoria Chemical Co., a corporation, Schwarz Druggists, Inc., a corporation, Schwarz Drug Co., a corporation, Schwarz Drug Stores, Inc., a corporation, Hiram Schwarz, Inc., a corporation, and Sarah Schwarz, Esther Schwarz, Joel J. Schwarz, Samuel Schwarz, Ira I. Schwarz, Sylvan Schwarz, Hiram Schwarz, Oscar Katz, and Jacob Eisen, 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, Victoria Chemical 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 887 Broad Street, Newark, N. J.

Respondent, Schwarz Druggists, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 887 Broad Street, Newark, N. J.

Respondent, Schwarz Drug 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 at 565 Bloomfield Avenue, Bloomfield, N. J.

Respondent, Schwarz Drug Stores, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 457 Clinton Avenue, Newark, N. J.

Respondent, Hiram Schwarz, 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 158 Main Street, White Plains, N. Y.

Respondent, Sarah Schwarz, is an individual and is president of the corporate respondent Victoria Chemical Co. Her principal office and place of business is located at 887 Broad Street, Newark, N. J.

Respondent, Esther Schwarz, is an individual and is secretary of the corporate respondent Victoria Chemical Co. Her principal office and place of business is located at 887 Broad Street, Newark, N. J.

Respondent, Joel J. Schwarz, is an individual and is treasurer of the corporate respondent Victoria Chemical Co., secretary of the corpo-

rate respondent Schwarz Druggists, Inc., and secretary of corporate respondent Hiram Schwarz, Inc., with his principal office and place of business located at 887 Broad Street, Newark, N. J.

Respondent, Samuel Schwarz, is an individual and is president of the corporate respondent Schwarz Druggists, Inc., vice president of the corporate respondent Schwarz Drug Co., vice president of the corporate respondent Schwarz Drug Stores, Inc., and president of the corporate respondent Hiram Schwarz, Inc., with his office and principal place of business located at 887 Broad Street, Newark, N. J.

Respondent, Ira I. Schwarz, is an individual and is treasurer of corporate respondent Schwarz Druggists, Inc., president of the corporate respondent Schwarz Drug Co., secretary of the corporate respondent Schwarz Drug Stores, Inc., and vice president of the corporate respondent Hiram Schwarz, Inc., with his office and principal place of business located at 887 Broad Street, Newark, N. J.

Respondent, Sylvan Schwarz, is an individual and is vice president of the corporate respondent Schwarz Druggists, Inc., secretary of the corporate respondent Schwarz Drug Co., and president of the corporate respondent Schwarz Drug Stores, Inc., with his office and principal place of business located at 887 Broad Street, Newark, N. J.

Respondent, Hiram Schwarz, is an individual and is treasurer of the corporate respondent, Hiram Schwarz, Inc., with his principal office and place of business located at 158 Main Street, White Plains, N. Y.

Respondent, Oscar Katz, is an individual and is treasurer of the corporate respondent Schwarz Drug Co., with his principal office and place of business located at 565 Bloomfield Avenue, Bloomfield, N. J.

Respondent, Jacob Eisen, is an individual and is treasurer of the corporate respondent Schwarz Drug Stores, Inc., with his office and principal place of business located at 457 Clinton Avenue, Newark, N. J.

The individual respondents formulate the policies and direct, control, and dominate the acts and practices of the corporate respondents. All of the respondents have acted in conjunction and cooperation each with the other in carrying out the acts and practices hereinafter set forth.

PAR. 2. The respondents are now and for more than 2 years last past have been engaged in the business of compounding, selling, and distributing a certain preparation containing drugs designated "Anti-Drink" and recommended by respondents for use as a treatment and cure for alcoholism and the liquor habit. Respondents cause their said preparation, when sold, to be transported from their aforesaid

places of business in the States of New York and New Jersey to purchasers thereof located in various other States of the United States and in the District of Coumbia. Respondents maintain, and 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 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; 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 periodicals, and by pamphlets, circulars, and other advertising matter, are the following:

DRINK HABIT CAN BE STOPPED

Have you a loved one who drinks more than is good for him? If so, you can help him with Anti-Drink. This highly effective preparation makes liquor distasteful to the most habitual drinker. Anti-Drink may be obtained at any Schwarz Drug Store.

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 by implication, that their preparation Anti-Drink is a cure or remedy and a competent and effective treatment for alcoholism and the liquor habit; that by its use the desire for alcoholic stimulants is eradicated; that said preparation is safe for use.

PAR. 4. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparation 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.

Respondents' preparation is not safe for use, as it contains the drug tartar emetic in a quantity sufficient to cause serious injury to health

if said preparation is 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 inflammatory disturbances of the stomach and intestinal tract, excessive depression of the cardio-vascular system, and metabolic disturbances arising from the central nervous system.

PAR. 5. Further, the advertisements disseminated by respondents, 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 serious injury to the stomach, intestinal tract, heart, and nervous system.

PAR. 6. The use by the respondents of the foregoing false and misleading advertisements, disseminated as aforesaid, 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 advertisements are true and to induce the purchasing public to purchase substantial quantities of respondents' product as a result of such 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 the 6th day of December 1940, issued and served its complaint in this proceeding upon said respondents, Victoria Chemical Company, Schwarz Druggists, Inc., Schwarz Drug Co., Schwarz Drug Stores, Inc., Hiram Schwarz, Inc., corporations, and Sarah Schwarz, Esther Schwarz, Joel J. Schwarz, Samuel Schwarz, Ira I. Schwarz, Sylvan Schwarz, Hiram Schwarz, Oscar Katz, and Jacob Eisen, individuals, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On December 26, 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 the respondents through their attorneys, Bertram S. Grand and Michael Sokol, and W. T. Kelley, chief counsel of the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony

in support of the charges stated in the complaint or in opposition thereto; and that the said Commission may proceed upon said statement of facts making its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without presentation of argument or the filing of briefs. Thereafter, this proceeding 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, Victoria Chemical 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 887 Broad Street, Newark, N. J.

Respondent, Schwarz Druggists, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 887 Broad Street, Newark, N. J.

Respondent, Schwarz Drug 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 at 565 Bloomfield Avenue, Bloomfield, N. J.

Respondent, Schwarz Drug Stores, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 457 Clinton Avenue, Newark, N. J.

Respondent, Hiram Schwarz, 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 158 Main Street, White Plains, N. Y.

Respondent, Sarah Schwarz, is an individual and is president of the corporate respondent Victoria Chemical Co. Her principal office and place of business is located at 887 Broad Street, Newark, N. J.

Respondent, Esther Schwarz, is an individual and is secretary of the corporate respondent Victoria Chemical Co. Her principal office and place of business is located at 887 Broad Street, Newark, N. J.

Respondent, Joel J. Schwarz, is an individual and is treasurer of the corporate respondent Victoria Chemical Co., secretary of the corporate

respondent Schwarz Druggists, Inc., and secretary of corporate respondent Hiram Schwarz, Inc., with his principal office and place of business located at 887 Broad Street, Newark, N. J.

Respondent, Samuel Schwarz, is an individual and is president of the corporate respondent Schwarz Druggists, Inc., vice president of the corporate respondent Schwarz Drug Co., vice president of the corporate respondent Schwarz Drug Stores, Inc., and president of the corporate respondent Hiram Schwarz, Inc., with his office and principal place of business located at 887 Broad Street, Newark, N. J.

Respondent, Ira I. Schwarz, is an individual and is treasurer of corporate respondent Schwarz Druggists, Inc., president of the corporate respondent Schwarz Drug Co., secretary of the corporate respondent Schwarz Drug Stores, Inc., and vice president of the corporate respondent Hiram Schwarz, Inc., with his office and principal place of business located at 887 Broad Street, Newark, N. J.

Respondent, Sylvan Schwarz, is an individual and is vice president of the corporate respondent Schwarz Druggists, Inc., secretary of the corporate respondent Schwarz Drug Co., and president of the corporate respondent Schwarz Drug Stores, Inc., with his office and principal place of business located at 887 Broad Street, Newark, N. J.

Respondent, Hiram Schwarz, is an individual and is treasurer of the corporate respondent Hiram Schwarz, Inc., with his principal office and place of business located at 158 Main Street, White Plains, N. Y.

Respondent, Oscar Katz, is an individual and is treasurer of the corporate respondent Schwarz Drug Co., with his principal office and place of business located at 565 Bloomfield Avenue, Bloomfield, N. J.

Respondent, Jacob Eisen, is an individual and is treasurer of the corporate respondent Schwarz Drug Stores, Inc., with his office and principal place of business located at 457 Clinton Avenue, Newark, N. J.

The individual respondents formulate the policies and direct, control, and dominate the acts and practices of the corporate respondents. All of the respondents have acted in conjunction and cooperation each with the other in carrying out the acts and practices hereinafter set forth.

PAR. 2. The respondents are now and for more than 2 years last past have been engaged in the business of compounding, selling, and distributing a certain preparation containing drugs designated "Anti-Drink" and recommended by respondents for use as a treatment and cure for alcoholism and the liquor habit. Respondents cause their said preparation, when sold, to be transported from their aforesaid

places of business in the States of New York and New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said 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 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; 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 periodicals, and by pamphlets, circulars and other advertising matter, are the following:

DRINK HABIT CAN BE STOPPED

Have you a loved one who drinks more than is good for him? If so, you can help him with Anti-Drink. This highly effective preparation makes liquor distasteful to the most habitual drinker. Anti-Drink may be obtained at any Schwarz Drug Store.

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 by implication, that their preparation Anti-Drink is a cure or remedy and a competent and effective treatment for alcoholism and the liquor habit; that by its use the desire for alcoholic stimulants is eradicated; that said preparation is safe for use.

PAR. 4. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' preparation 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.

Respondents' preparation is not safe for use, as it contains the drug tartar emetic in a quantity sufficient to cause serious injury to

health if said preparation is 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 inflammatory disturbances of the stomach and intestinal tract, excessive depression of the cardiovascular system, and metabolic disturbances arising from the central nervous system.

PAR. 5. Further, the advertisements disseminated by respondents, 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 serious injury to the stomach, intestinal tract, heart, and nervous system.

PAR. 6. The use by the respondents of the foregoing false and misleading advertisements, disseminated as aforesaid, 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 advertisements are true and to induce the purchasing public to purchase substantial quantities of respondents' product as a result of such 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 the respondents and a stipulation as to the facts entered into by Bertram S. Grand and Michael Sokol, attorneys for the respondents herein, Victoria Chemical Co., Schwarz Druggists, Inc., Schwarz Drug Co., Schwarz Drug Stores, Inc., Hiram Schwarz, Inc., corporations, and Sarah Schwarz, Esther Schwarz, Joel J. Schwarz, Samuel Schwarz, Ira I. Schwarz, Sylvan Schwarz, Hiram Schwarz, Oscar Katz, and Jacob Eisen, individuals, 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 proceed-

ing, and the Commission having made its findings as to the facts and conclusion that said respondents have violated provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Victoria Chemical Co., Schwarz Druggists, Inc., Schwarz Drug Co., Schwarz Drug Stores, Inc., Hiram Schwarz, Inc., corporations, their officers, representatives, agents, and employees, and Sarah Schwarz, Esther Schwarz, Joel J. Schwarz, Samuel Schwarz, Ira I. Schwarz, Sylvan Schwarz, Hiram Schwarz, Oscar Katz, and Jacob Eisen, individuals, their representatives, agents, and employees, directly or through any corporate device in connection with the offering for sale, sale, and distribution of their medicinal preparation designated "Anti-Drink" or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or names or under any other name, do forthwith cease and desist 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 advertisements represent, directly or through implication, that said preparation is a cure for 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 harmless, or may be safely used, or which fail to reveal that the use of such preparation may result in inflammation of the stomach and intestinal tract and disturbance of the heart and nervous system.

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 product, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fail to reveal that the use of such preparation may result in inflammation of the stomach and intestinal tract and disturbance of the heart and nervous system.

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

J. H. CAMP, TRADING AS J. H. CAMP, AND DRUG PROFITS, INC.

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

Docket 4446. Complaint, Jan. 14, 1941—Decision, Mar. 12, 1941

Where an individual engaged in interstate sale and distribution of his "Phalene" and "Burtone" drug-containing preparations; by advertisements disseminated through the mails and through radio continuities—

(*a*) Represented, directly and by implication, that said "Phalene" was a tonic for the liver and that its use would help remove poisons that cause premature aging, and that it was a competent and effective treatment for sick headache, nauseated stomach, loss of appetite, aching muscles and joints, indigestion, and acid conditions;

Facts being it was primarily an irritant laxative and was not a tonic for the liver, effect upon which would be limited to tending to increase secretion of bile; its action in removing poisons from the system was no greater than that of any ordinary laxative; and it had no value in preventing premature aging nor in the treatment of aforesaid ailments and conditions, in excess of affording temporary relief when such conditions were due to constipation; and

(*b*) Represented, directly and by implication, that said "Burtone" was a competent and effective treatment for bilious attacks, stomach nausea, headaches, indigestion, stomach gas and weak, tired-out feeling, and that it would correct faulty habits of elimination, produce free organic action of the liver and lower bowel and free the body of toxic poisons;

Facts being, said preparation's therapeutic property was limited to that of a laxative and mild choleretic, it had no therapeutic value in treatment of aforesaid ailments and conditions in excess of affording temporary relief when such conditions were due to constipation, and it would not correct faulty habits of elimination, produce free organic action of the liver or lower bowel or free the body from toxic poisons;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading representations were true, and because of said belief, of inducing purchase by it of products aforesaid in substantial quantities:

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

PARAGRAPH 1. The respondent, J. H. Camp, is an individual trading as J. H. Camp and as Drug Profits, Inc., with his office and principal place of business located at Ravenswood, W. Va.

PAR. 2. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of certain preparations containing drugs, designated by him as "Phalene" and "Burtone," and recommended by him for use in treatment of various ailments and conditions of the human body.

Respondent causes the said preparations, when sold by him, to be transported from his aforesaid 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 said preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of 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 products 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 the said products by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the 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 by radio continuities, are the following:

PHALENE

Reach for health with Phalene! When you feel tired, weak, worn, old—

Phalene acts to restore the normal flow of vital digestive juices—helps remove poisons that make you old before your time.

When you suffer from sick headache, nauseated stomach, loss of appetite, aching muscles and joints, restless sleep, and a tired, weak body * * * and when your condition indicates the need for anti-acid and digestive treatments give Phalene a trial.

Phalene is a guaranteed tonic for the liver.

This is an old, tried and true product * * * When you feel bad * * * when you're sluggish * * * get a bottle of Phalene tablets.

* * * was developed for use in the medical world as a laxative tonic for the liver * * *

BURTONE

A more thorough treatment when there's Bilious Attacks, Stomach Nausea, Headaches, Indigestion, Stomach Gas, and that Weak Tired-Out Feeling. These will remain—unless you correct faulty habits of the elimination; unless there's free organic action of the liver and lower bowel.—that's why we say try Burtone * * * Because Burtone now contains these helps.

Treatment: Begin the cathartic dose. Then one tablet night and morning until your tongue clears and your body feels free from toxic poisons.

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, directly and by implication, that his preparation designated "Phalene" is a tonic for the liver and that its use will help remove poisons that cause premature aging; that it is a competent and effective treatment for sick headache, nauseated stomach, loss of appetite, aching muscles and joints, restless sleep, tired, run-down condition of the body, indigestion and acid conditions. By the same means the respondent represents that "Burtone" is a competent and effective treatment for bilious attacks, stomach nausea, headaches, indigestion, stomach gas and weak, tired-out feeling; that it will correct faulty habits of elimination and produce free organic action of the liver and lower bowel; and that it will free the body of toxic poisons.

PAR. 5. The foregoing representations are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's preparation "Phalene" is primarily an irritant laxative. This preparation is not a tonic for the liver and its effect upon the liver would be limited to tending to increase the secretion of bile by the liver. Its action in removing poisons from the system is no greater than that of any ordinary laxative, and it will have no value in preventing premature aging. Respondent's preparation has no therapeutic value in the treatment of sick headache, nauseated stomach, loss of appetite, aching

muscles and joints, restless sleep, tired, run-down condition of the body, indigestion, or acid conditions in excess of affording temporary relief when such conditions are due to or symptomatic of constipation.

The therapeutic property of respondent's preparation "Burtone" is limited to that of a laxative and mild choleretic. The preparation has no therapeutic value in the treatment of bilious attacks, stomach nausea, headaches, indigestion, stomach gas or weak, tired out feeling in excess of affording temporary relief when such conditions are due to constipation. Said preparation will not correct faulty habits of elimination, produce free organic action of the liver or lower bowel or free the body from toxic poisons.

PAR. 6. The use by the respondent of the foregoing false and misleading advertisements, disseminated as aforesaid, has the tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading advertisements and representations are true and to induce the purchasing public to purchase substantial quantities of respondent's preparations as a result of such erroneous and mistaken belief.

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 14, 1941, issued and served its complaint in this proceeding upon the respondent J. H. Camp, trading as J. H. Camp, and Drug Profits, Inc., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 22 and January 29, 1941, the respondent filed 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 respondent J. H. Camp and W. T. Kelley, chief counsel of the Federal Trade Commission, subject to 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, making 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, and the respondent expressly waived the filing of the report upon the evidence by the trial examiner.

Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answers, and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, J. H. Camp, is an individual trading as J. H. Camp and as Drug Profits, Inc., with his office and principal place of business located at Ravenswood, W. Va.

PAR. 2. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of certain preparations containing drugs, designated by him as "Phalene" and "Burtone" and recommended by him for use in the treatment of various ailments and conditions of the human body.

Respondent causes the said preparations, when sold by him, to be transported from his aforesaid 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 said preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of 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 products 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 the said products by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the 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 by radio continuities, are the following:

PHALENE

Reach for health with Phalene! When you feel tired, weak, worn, old—

Phalene acts to restore the normal flow of vital digestive juices—helps remove poisons that make you old before your time.

When you suffer from sick headache, nauseated stomach, loss of appetite, aching muscles and joints, restless sleep, and a tired, weak body * * * and when your condition indicates the need for antiacid and digestive treatments give Phalene a trial.

Phalene is a guaranteed tonic for the liver.

This is an old, tried and true product * * * When you feel bad * * * when you're sluggish * * * get a bottle of Phalene tablets.

* * * was developed for use in the medical world as a laxative tonic for the liver * * *

BURTONE

A more thorough treatment when there's Bilious Attacks, Stomach Nausea, Headaches, Indigestion, Stomach Gas, and that Weak Tired-Out Feeling. These will remain—unless you correct faulty habits of the elimination; unless there's free organic action of the liver and lower bowel.—that's why we say try Burtone * * * Because Burtone now contains these helps.

Treatment: Begin the cathartic dose. Then one tablet night and morning until your tongue clears and your body feels free from toxic poisons.

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, directly and by implication, that his preparation designated "Phalene" is a tonic for the liver and that its use will help remove poisons that cause premature aging; that it is a competent and effective treatment for sick headache, nauseated stomach, loss of appetite, aching muscles and joints, indigestion, and acid conditions. By the same means the respondent represents that "Burtone" is a competent and effective treatment for bilious attacks, stomach nausea, headaches, indigestion, stomach gas and weak, tired-out feeling; that it will correct faulty habits of elimination and produce free organic action of the liver and lower bowel; and that it will free the body of toxic poisons.

PAR. 5. The foregoing representations are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's preparation "Phalene" is primarily an irritant laxative. This preparation is not a tonic for the liver and its effect upon the liver would be limited to tending to increase the secretion of bile by the liver. Its action in removing poisons from the system is no greater than that of any ordinary laxative, and it will have no value in preventing premature aging. Respondent's preparation has no therapeutic value in the treatment of sick headache, nauseated stomach, loss of appetite, aching muscles and joints, restless sleep, tired, run-down condition of the body, indigestion, or acid conditions in excess of affording temporary relief when such conditions are due to or symptomatic of constipation.

The therapeutic property of respondent's preparation "Burtone" is limited to that of a laxative and mild choleretic. This preparation has no therapeutic value in the treatment of bilious attacks, stomach nausea, headaches, indigestion, stomach gas or weak, tired-out feeling in excess of affording temporary relief when such conditions are due to constipation. Said preparation will not correct faulty habits of elimination, produce free organic action of the liver or lower bowel or free the body from toxic poisons.

PAR. 6. The use by the respondent of the foregoing false and misleading advertisements, disseminated as aforesaid, has the tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading advertisements and representations are true and to induce the purchasing public to purchase substantial quantities of respondent's preparations as a result 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, the answers of respondent and the stipulation as to the facts entered into by the respondent J. H. Camp, trading as J .H. Camp, and Drug Profits, Inc., and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, the filing of a report upon the evidence by the trial examiner having been expressly 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 J. H. Camp, individually and trading as J. H. Camp, and Drug Profits, Inc., 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 preparations designated "Phalene" and "Burtone" or any other preparation or

preparations composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same or any other name or names, do forthwith cease and desist from:

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 advertisement represents directly or through implication—

(*a*) That the preparation "Phalene" is a tonic for the liver.

(*b*) That the preparation "Phalene" has any value in preventing premature aging or has any value for removing poisons from the system in excess of that afforded by an ordinary laxative.

(*c*) That the preparation "Phalene" has any therapeutic value in the treatment of sick headache, nauseated stomach, loss of appetite, aching muscles and joints, restless sleep, tired run-down condition of the body, indigestion, or acid conditions in excess of causing a laxative action by the intestines and thus affording temporary relief when such conditions are due to or symptomatic of constipation.

(*d*) That the preparation "Burtone" will correct faulty habits of elimination, produce free organic action of the liver or lower bowel or free the body of toxic poisons, or that said preparation has any therapeutic value in the treatment of bilious attacks, stomach nausea, headaches, indigestion, stomach gas, or sick, tired-out feeling, in excess of affording temporary relief when such conditions are due to constipation.

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 "Phalene" and "Burtone," 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

LESSING HAT COMPANY, INC., AND JOSEPH LORING, TRADING AS LORING HAT COMPANY

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

Docket 4245. Complaint, Aug. 20, 1940—Decision, Mar. 13, 1941

Where a corporation and an individual, who was its president and managed, controlled, and dominated its affairs and activities, engaged in manufacture of caps and hats from old, used, and second-hand hats purchased by them, through cleaning, steaming, ironing, and shaping and, in some instances, fitting with new trimmings, sweat bands, and size labels, such previously used felt hat bodies so that they had appearance of new hats and caps made from felts and other materials which had never been worn or used—

(*a*) Sold their said hats and caps to retailers, jobbers, and wholesalers, with no labeling, marking, or designation stamped thereon to indicate to purchasing public that they were in fact made from old hat bodies, cleaned and renovated; and

(*b*) Failed adequately to inform members of purchasing public that such products made by them were in fact made from old, worn, and previously used bodies, as distinguished from those made from newly manufactured materials, through stamping term "Made of Castaway Hats" on sweat bands or size labels in such a way that jobbers, wholesalers, and retailers, leaving number, could readily remove that portion of label bearing aforesaid term;

With result that, through use of said labels and other acts and practices above set forth, they placed in hands of uninformed or unscrupulous dealers means and instrumentality whereby they might deceive or mislead members of purchasing public, by whom, lacking clear and conspicuous label disclosure, articles thus made are readily taken for those of new material entirely, into erroneous and mistaken belief that they were purchasing hats and caps made from new and unused materials or from bodies from shopworn or unsalable hats, and with effect of misleading and deceiving a substantial number of wholesalers, jobbers, retailers, and members of said public into aforesaid erroneous belief and, by reason thereof, into purchase of a substantial number of said hats and caps:

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. Miles J. Furnas*, trial examiner.

Mr. Robert Mathis, Jr., for the Commission.

Mr. S. Jerome Loring, of Long Island, N. Y., 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 Lessing Hat Co., Inc., and Joseph Loring, an individual, trading as Loring Hat Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lessing Hat Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondent, Joseph Loring, is an individual and is president of the respondent corporation, Lessing Hat Co., Inc., and as such manages, controls, and dominates its corporate affairs and activities with reference to the unfair and deceptive acts and practices herein alleged. Respondent, Joseph Loring, also trades as Loring Hat Co. All of said respondents have their office and principal place of business at Third and Mercer Streets, in the city and State of New York.

PAR. 2. In the course and conduct of their business described herein, respondents for more than 2 years last past have been engaged in the business of manufacturing caps and hats from felt and other materials obtained from old, used, and second-hand hats and of selling the same to retailers, jobbers, and wholesale dealers located in the various States of the United States. Respondents cause such caps and hats when sold to be transported from their place of business in the State of New York to the aforesaid purchasers located in the various States of the United States other than the State of New York. Respondents maintain and have maintained a course of trade in said hats and caps in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents buy second-hand, old, worn, and previously used felt hats. The old, worn, and previously used felt hat bodies are cleaned, steamed, ironed, and shaped by respondent and then are fitted with new trimmings, sweat bands, size labels, and sold by respondents to retailers and wholesale dealers who in turn sell said hats and caps to the purchasing public.

PAR. 4. The aforesaid old, worn, and previously used hat bodies, after being manufactured into hats or caps, are in some instances fitted with new trimmings, sweat bands, and size labels, as described herein, and have the appearance of new hats and caps manufactured from felts and other materials which have never been worn or used. When articles which are in fact manufactured from second-hand or used materials, but which have the appearance of being manufactured

from new materials, are offered to the purchasing public and such articles are not clearly and conspicuously labeled as being manufactured from used or second-hand materials, they are easily and readily taken by members of the purchasing public as being manufactured entirely from new materials.

Said hats and caps manufactured by respondents are sold to retailers and to jobbers and wholesale dealers without any label, marking, or designation stamped thereon to indicate to the purchasing public that said hats and caps are in fact manufactured from old, worn, and previously used hat bodies which have been cleaned and renovated by respondents. Said hats and caps are resold to the purchasing public without disclosing the fact that they are in fact manufactured from hat bodies and other materials which have been previously worn or used and under such circumstances purchasers are led to believe that they are in fact new hats and caps manufactured entirely from new materials.

On some part of the sweat band or size labels which are attached to said hats or caps, the respondents have caused to be stamped the words "Made of castaway hats." This size label is printed so that one portion has the size number printed thereon and the other portion has the words "Made of castaway hats" printed thereon. These labels are so attached to the hat or cap that jobbers, wholesale dealers, and retailers can readily and easily cut off and remove that portion of the label bearing the term "Made of castaway hats," leaving the size number on the remaining portion of said label.

PAR. 5. The term "Made of Castaway Hats" under the conditions of use hereinabove described does not adequately inform members of the purchasing public that the hats and caps manufactured by the respondents and sold under such designation are in fact made from old, worn, and previously used hat bodies as distinguished from hats and caps made from newly manufactured materials which have never been worn or used.

PAR. 6. By the use of the aforesaid label, and the other acts and practices set forth herein, the respondents place in the hands of uninformed or unscrupulous jobbers, wholesalers, and retail dealers means and instrumentalities whereby said jobbers, wholesale and retail dealers may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing hats or caps manufactured from new and unused materials, which are in fact composed entirely or in part of old, second-hand, and previously used hats or materials.

PAR. 7. The use by respondents 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, retail dealers, and members of the purchasing public into the erroneous and mistaken beliefs that the said hats and caps are manufactured from new and unused materials or made from new but shopworn hat bodies which have never been worn or used and into the purchase of a substantial number of such hats and caps because of such erroneous and mistaken beliefs.

PAR. 8. 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 August 1940, issued and subsequently served its complaint in this proceeding upon said respondents, Lessing Hat Co., Inc., and Joseph Loring, an individual trading as Loring Hat 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 (no answer being filed on behalf of respondents), testimony and other evidence in support of the allegations of said complaint were introduced by Robert Mathis, Jr., attorney for the Commission, the respondents being represented by S. Jerome Loring, 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. The respondents expressly agreed that the Commission may proceed 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. The respondents further 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 the said complaint, testimony, and other evidence; 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, Lessing Hat Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondent, Joseph Loring, is an individual and is president of the respondent corporation, Lessing Hat Co., Inc., and as such manages, controls, and dominates its corporate affairs and activities with reference to the unfair and deceptive acts and practices herein set forth. Respondent, Joseph Loring, also trades as Loring Hat Co. All of said respondents have their office and principal place of business at Third and Mercer Streets, in the city and State of New York.

PAR. 2. In the course and conduct of their said business, respondents, for more than 2 years last past, have been engaged in the business of manufacturing caps and hats from felt and other materials obtained from old, used, and second-hand hats and of selling the same to retailers, jobbers, and wholesale dealers located in the various States of the United States. Respondents cause such caps and hats, when sold, to be transported from their place of business in the State of New York to the aforesaid purchasers located in the various States of the United States other than the State of New York. Respondents maintain and have maintained a course of trade in said hats and caps in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents buy second-hand, old, worn, and previously used felt hats. The old, worn, and previously used felt hat bodies are cleaned, steamed, ironed, and shaped by respondents and then are fitted with new trimmings, sweat bands, and size labels and sold by respondents to retailers and wholesale dealers, who in turn sell said hats and caps to the purchasing public.

PAR. 4. The aforesaid old, worn, and previously used hat bodies, after being manufactured into hats or caps, are in some instances fitted with new trimmings, sweat bands, and size labels as described herein and have the appearance of new hats and caps manufactured from felts and other materials which have never been worn or used. When articles which are in fact manufactured from second-hand or used materials, but which have the appearance of being manufactured from new materials, are offered to the purchasing public and such articles are not clearly and conspicuously labeled as being manufactured from used or second-hand materials, they are easily and

readily taken by members of the purchasing public as being manufactured entirely from new materials.

Said hats and caps manufactured by respondents are sold to retailers and to jobbers and wholesale dealers without any labeling, 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 which have been cleaned and renovated by respondents.

PAR. 5. On some part of the sweat band or size labels which are attached to said hats or caps, the respondents have caused to be stamped the word "Made of Castaway Hats." This size label is printed so that one portion has the size number printed thereon and the other portion has the words "Made of Castaway Hats" printed thereon. These labels are so attached to the hat or cap that the jobbers, wholesale dealers, and retail dealers can readily and easily cut off and remove that portion of the label bearing the term "Made of Castaway Hats," leaving the size number on the remaining portion of said label. In some instances the label is attached in the reverse of the manner above described so that the portion of the label reading "Made of Castaway Hats" is attached to the hat or cap.

PAR. 6. The term "Made of Castaway Hats" under the conditions of use hereinabove described does not adequately inform members of the purchasing public that the hats and caps manufactured by the respondents and sold under such designation are in fact made from old, worn, and previously used hat bodies, as distinguished from hats and caps made from newly manufactured materials which have never been worn or used.

PAR. 7. By the use of the aforesaid labels and the other acts and practices set forth herein, the respondents place in the hands of uninformed or unscrupulous jobbers, wholesale and retail dealers, a means and instrumentality whereby said jobbers, wholesale and retail dealers may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing hats or caps manufactured from new and unused materials, or from shopworn hat bodies, when in fact the hats sold by respondents are composed entirely or in part of old, second-hand, and previously used hats or 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 may be a hat that came through with a marking or defacement on the surface of the felt or any part of it. It is an unsalable hat.

PAR. 8. The use by the respondents 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, retail dealers, and members of the purchasing public into the erroneous and mistaken belief that the said hats and caps are manufactured from new and unused materials or made from new but shopworn hat bodies which have never been worn or used, and into the purchase of a substantial number of said hats or caps because 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, 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 the said complaint and in opposition thereto, by Robert Mathis, Jr., counsel for the Commission, and by S. Jerome Loring, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Lessing Hat Co., Inc., its officers, directors, representatives, agents, and employees, and respondent Joseph Loring, individually and trading as Loring Hat 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 hats and caps in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that hats or caps manufactured in whole or in part of used or second-hand materials, are new or are composed of new materials, by failure to stamp on the sweat bands thereof in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweat bands, a statement that said products are composed of second hand or used materials, provided that if sweat bands are not affixed to such hats or caps then such stamping must

appear on the bodies of such hats or caps in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

2. Representing in any manner that hats or caps made in whole or in part from old, used, or second-hand materials are new or are composed of new materials.

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

IN THE MATTER OF

HEALTH RAY 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 4408. Complaint, Dec. 7, 1940—Decision, Mar. 13, 1941

Where a corporation engaged in manufacture and in interstate sale and distribution of its so-called "Twin-Arc Health Ray Sun Lamp" for home use by the lay individual as an artifical means of obtaining the ultraviolet rays of natural sunlight, and, as alleged, for the prevention, treatment, and alleviation of various ailments, diseases, and abnormal conditions; in advertisements which it disseminated and caused to be disseminated through the mails, newspapers, and periodicals, and advertising literature, and by other means in commerce, and otherwise—

(*a*) Represented, directly and by implication, that its said product was a sun lamp and that the wave lengths of the ultraviolet rays which it emitted were of the same wave lengths as natural midsummer sunlight but with an intensity 15 times greater, and that such device was suitable and safe for home use by the layman for treating various bodily ailments and diseases without the direction, supervision, or advice of a qualified physician; facts being its said lamp, by reason of the nature of the ultraviolet rays emitted therefrom, which were not of the same wave lengths as natural sunlight and did not have the intensity claimed therefor, as above set forth, was not a sun lamp, but was in the category of therapeutic lamps which are not suitable for the same type of uses as are sun lamps, nor for home use for therapeutic purposes without supervision of a trained and skilled operator, because of danger of overexposure and severe burns;

(*b*) Represented, as aforesaid, that said device would give benefits to the skin and general health of the user comparable and equivalent to, or greatly exceeding, those given by natural midsummer sunlight, and that use thereof would help build strong bones and teeth, tone up the system, and act as a tonic, increase the activity of many glands, build up bodily resistance and improve general health; facts being it would not give benefits to skin and general health comparable to those given by natural sunlight, since ultraviolet rays emitted therefrom were not, in truth, comparable to the ultraviolet rays of natural sunlight, and it would not accomplish other results claimed;

(*c*) Represented, as aforesaid, that it served as a cure, remedy, or competent and adequate treatment for athlete's foot and would kill the responsible germs or spores in the skin affected, and that it was such a cure, remedy, or treatment for acne, pimples, and surface skin eruptions, which it caused to disappear; facts being its therapeutic value was limited to the possible destruction of bacteria when present on the surface of the skin, and it had no value in the treatment of athlete's foot or the other ailments or conditions above set forth, and would not accomplish results claimed for it as aforesaid; and

(*d*) Failed to reveal facts material in the light of the representations contained in aforesaid advertisements, and that unsupervised use of its device for therapeutic purposes by persons not trained in operation thereof and not skilled in diagnosis, analysis, and methods of treatment of disease, might result in severe burns and other serious and irreparable injury to health;

With effect of misleading and deceiving a substantial portion of the purchasing public into erroneous and mistaken belief that such false representations were true, and of thereby inducing its purchase of 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. Merle P. Lyon for the Commission.

Mr. Max E. Kaplan, of Suffern, 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 Health Ray Manufacturing 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, Health Ray Manufacturing Co., Inc., as a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located on North Elm Street, in the city of Deep River, State of Connecticut. It is now, and for more than 2 years last past has been, engaged in the manufacture and in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of a device designated "Twin-Arc Health Ray Sun Lamp." Said device is sold, designed, and intended for home use by the lay individual as an artificial means of obtaining the ultraviolet rays of natural sunlight and for the alleged prevention, treatment, and alleviation of various ailments, diseases and abnormal conditions of the human body.

Par. 2. Said respondent, being engaged in business as aforesaid, causes and has caused its said product, "Twin-Arc Health Ray Sun Lamp," when sold, to be transported from its factory at Deep River, Conn., to purchasers located in States of the United States other than the State of origin of such shipments and also in the District of Columbia. There is now, and has been during all the times herein

mentioned, a course of trade in the afore-mentioned product sold by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its 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 advertisements in newspapers and periodicals, and by other advertising literature, are the following:

* * * 4 minutes with the New Twin-Arc Sun Lamp is equivalent to One Hour of Sunshine.

* * * the revolutionizing new Twin-Arc Health Ray Sun Lamp * * *

Bring "Sunlight" into Your Home! Health Ray has perfected this new, inexpensive Twin-Arc sun lamp so that you can have the beneficial ultraviolet rays more quickly and conveniently! Think of it—with the Twin-Arc you get your ultraviolet rays 15 times faster than in clear summer sunshine! * * *

Frequent exposure to the ultraviolet rays of the sun helps to build strong bones and teeth, tones up the system and increases the activity of many glands. Ultraviolet rays create Vitamin D and are invaluable in the prevention and treatment of rickets. Laboratory tests have shown that they quickly destroy the germs of athlete's foot. * * * Bring "Sunlight" into Your Home! Health Ray has perfected this new, inexpensive Twin-Arc sun lamp so that you can have the beneficial ultraviolet rays more quickly and conveniently! * * * Now, with the Twin-Arc Health Ray Sun Lamp, you can get * * * the same tonic effect in four minutes!

* * * Now—right in your home—you can have the benefits of the same Ultraviolet Rays that you get from summer sunlight * * *

* * * Crops of surface acne pimples often disappear while using the Sun Lamp, * * *

If you have the burning, itching discomfort of Athlete's Foot, take advantage of the ultraviolet rays, which quickly kill the parasites on contact.

* * * With the Twin-Arc Sun Lamp in your home you can build up your own bodily resistance, so that you will not only *look* better but will *feel* better, too!

* * * the Twin-Arc Health Ray Sun Lamp * * * is a valuable aid to health, giving you the same benefits that you get from the ultraviolet rays of

the sun * * * These vitally important rays * * * are a great help in clearing the skin of temporary crops of surface pimples * * *

PAR. 4. By the use of the above and similar representations not set-out herein in its advertising matter as aforesaid, respondent has directly and by implication represented to the general public that its said device, designated as "Twin-Arc Health Ray Sun Lamp," is a sun lamp; that the wave lengths of the ultraviolet rays emitted therefrom are of the same wave lengths and intensity of natural midsummer sunlight; that it is suitable and safe for home use by the lay individual for treating various bodily ailments and diseases without the direction, supervision, or advice of a qualified physician; that it will give benefits to the skin and general health of the person using it comparable and equivalent to or greatly exceeding that given by natural midsummer sunlight; that its use for home treatment will help build strong bones and teeth; that it will tone up the system and act as a tonic; that its use will increase the activity of many glands of the body; that it serves as a cure, remedy, or competent and adequate treatment for athlete's foot and that it will kill the germs or spores causing this condition as they exist in the skin where affected; that it is a cure, remedy, or competent and adequate treatment for acne, pimples, and surface skin eruptions, and causes them to disappear; and that it builds up bodily resistance and improves the general health.

PAR. 5. Ultraviolet rays are measured in angstrom units. The ultraviolet rays emitted from natural sunlight range in wave lengths from 2,800 to 3,150 angstrom units. A lamp which emits ultraviolet rays within this range is properly understood and designated by members of the medical profession generally as a sun lamp. Lamps which emit ultraviolet rays of less than 2,800 angstrom units are considered by the medical profession generally as therapeutic lamps rather than as sun lamps for the reason that the rays emitted therefrom possess bactericidal properties, and are not comparable to the rays emitted by natural sunlight. Such therapeutic lamps are not suitable for the same type of uses as are sun lamps and are not suitable for home use for therapeutic purposes without the supervision of a trained and skilled operator because of the danger of overexposure and severe burns. Respondent's lamp is in the category of therapeutic lamps by reason of its emission of ultraviolet rays of less than 2,800 angstrom units.

Respondent's device will not give benefits to the skin and to the general health of the individual comparable to that given by natural sunlight for the reason that the ultraviolet rays emitted therefrom are not, in turn, comparable to the ultraviolet rays emitted by natural sunlight. The use of this device for home treatment will not help build

strong bones and teeth, tone up the system, act as a tonic or stimulate the activity of the glands of the body. The therapeutic value of respondent's device is limited to the possible destruction of bacteria when present on the surface of the skin and it has no value in the treatment of athlete's foot and will not destroy the germs or spores causing such condition which usually exist in the layers of the skin beneath the surface. It is not a cure, remedy, or competent and adequate treatment for acne, pimples, or other skin eruptions, and does not cause them to disappear. The use of said device does not build up bodily resistance or improve the general health.

PAR. 6. In addition to the false and misleading statements hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements, as aforesaid, in that said advertisements fail to reveal facts material in the light of the representations contained therein and fail to reveal that the unsupervised use of respondent's device for therapeutic purposes by persons not trained in the operation of such device and not skilled in the diagnosis, analysis and methods of treatment of disease may result in severe burns and other serious and irreparable injury to health.

PAR. 7. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid with respect to the therapeutic value of its said device, Twin-Arc Health Ray Sun Lamp, has had, and now has, the tendency and capacity to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said device.

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 the 7th day of December 1940, issued and subsequently served its complaint in this proceeding upon said respondent Health Ray Manufacturing 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 January 17,

1941, 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, M. E. Kaplan, 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. In said stipulation respondent expressly waived 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, 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, Health Ray 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 principal office and place of business located on North Elm Street, in the city of Deep River, State of Connecticut. It is now, and for more than 2 years last past has been engaged in the manufacture and in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of a device designated "Twin-Arc Health Ray Sun Lamp." Said device is sold, designed, and intended for home use by the lay individual as an artificial means of obtaining the ultraviolet rays of natural sunlight and for the alleged prevention, treatment, and alleviation of various ailments, diseases, and abnormal conditions of the human body.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes and has caused its said product, "Twin-Arc Health Ray Sun Lamp," when sold, to be transported from its factory at Deep River, Conn., to purchasers located in States of the United States other than the State of origin of such shipments and also in the District of Columbia. There is now, and has been during all the times herein mentioned, a course of trade in the aforementioned product sold by

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

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and has caused 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 has caused 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. Respondent states, however, that at the present time it is disseminating no advertisements whatever, and that magazine advertising was discontinued in March 1940, and advertising by mail was discontinued in the summer of 1940. 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 other advertising literature, are the following:

* * * 4 minutes with the New Twin-Arc Sun Lamp is equivalent to One Hour of Sunshine.

* * * the revolutionizing new Twin-Arc Health Ray Sun Lamp * * *

Bring "Sunlight" into Your Home! Health Ray has perfected this new, inexpensive Twin-Arc sun lamp so that you can have the beneficial ultraviolet rays more quickly and conveniently! Think of it—with the Twin-Arc you get your ultraviolet rays 15 times faster than in clear summer sunshine! * * *

Frequent exposure to the ultraviolet rays of the sun helps to build strong bones and teeth, tones up the system and increases the activity of many glands. Ultraviolet rays create Vitamin D and are invaluable in the prevention and treatment of rickets. Laboratory tests have shown that they quickly destroy the germs of athlete's foot * * * Bring "Sunlight" into your Home! Health Ray has perfected this new, inexpensive Twin-Arc sun lamp so that you can have the beneficial ultraviolet rays more quickly and conveniently! * * * Now, with the Twin-Arc Health Ray Sun Lamp, you can get * * * the same tonic effect in four minutes!

* * * Now—right in your home—you can have the benefits of the same Ultraviolet Rays that you get from summer sunlight * * *

* * * Crops of surface acne pimples often disappear while using the Sun Lamp * * *

If you have the burning, itching discomfort of Athlete's Foot, take advantage of the ultraviolet rays, which quickly kill the parasites on contact.

* * * With the Twin-Arc Sun Lamp in your home you can build up your own bodily resistance, so that you will not only *look* better but will *feel* better, too!

* * * the Twin-Arc Health Ray Sun Lamp * * * is a valuable aid to health, giving you the same benefits that you get from the ultraviolet rays of the sun * * * These vitally important rays * * * are a great help in clearing the skin of temporary crops of surface pimples * * *

PAR. 4. By the use of the above and similar representations not set-out herein in its advertising matter as aforesaid, respondent has directly and by implication represented to the general public that its said device, designated as "Twin-Arc Health Ray Sun Lamp," is a sun lamp; that the wave lengths of the ultraviolet rays emitted therefrom are of the same wave lengths and have an intensity of 15 times greater than that of natural midsummer sunlight; that it is suitable and safe for home use by the lay individual for treating various bodily ailments and diseases without the direction, supervision, or advice of a qualified physician; that it will give benefits to the skin and general health of the person using it comparable and equivalent to or greatly exceeding that given by natural midsummer sunlight; that its use for home treatment will help build strong bones and teeth; that it will tone up the system and act as a tonic; that its use will increase the activity of many glands of the body; that it serves as a cure, remedy, or competent and adequate treatment for Athlete's Foot and that it will kill the germs or spores causing this condition as they exist in the skin where affected; that it is a cure, remedy, or competent and adequate treatment for acne, pimples, and surface skin eruptions, and causes them to disappear; and that it builds up bodily resistance and improves the general health.

PAR. 5. Ultra violet rays are measured in angstrom units. The ultraviolet rays emitted from natural sunlight range in wave lengths from 2,800 to 3,150 angstrom units. A lamp which emits ultraviolet rays within this range is properly understood and designated by members of the medical profession generally as a sun lamp. Lamps which emit ultraviolet rays of less than 2,800 angstrom units are considered by the medical profession generally as therapeutic lamps rather than as sun lamps for the reason that the rays emitted therefrom possess bactericidal properties and are not comparable to the rays emitted by natural sunlight. Such therapeutic lamps are not suitable for the same type of uses as are sun lamps and are not suitable for home use for therapeutic purposes without the supervision of a trained and skilled operator because of the danger of overexposure and severe burns. Respondent's lamp is in the category of therapeutic lamps by reason of its emission of ultraviolet rays of less than 2,800 angstrom units.

Respondent's device will not give benefits to the skin and to the general health of the individual comparable to that given by natural sunlight for the reason that the ultraviolet rays emitted therefrom are not, in turn, comparable to the ultraviolet rays emitted by natural sunlight. The use of this device for home treatment will not help build strong bones and teeth, tone up the system, act as a tonic, or stimulate the activity of the glands of the body. The therapeutic value of respondent's device is limited to the possible destruction of bacteria when present on the surface of the skin and it has no value in the treatment of Athlete's Foot and will not destroy the germs or spores causing such condition which usually exist in the layers of the skin beneath the surface. It is not a cure, remedy, or competent and adequate treatment for acne, pimples, or other skin eruptions, and does not cause them to disappear. The use of said device does not build up bodily resistance or improve the general health.

PAR. 6. In addition to the false and misleading statements hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements, as aforesaid, in that said advertisements fail to reveal facts material in the light of the representations contained therein and fail to reveal that the unsupervised use of respondent's device for therapeutic purposes by persons not trained in the operation of such device and not skilled in the diagnosis, analysis and methods of treatment of disease may result in severe burns and other serious and irreparable injury to health.

PAR. 7. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid with respect to the therapeutic value of its said device, Twin-Arc Health Ray Sun Lamp, has had and now has, the tendency and capacity to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase 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, 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, Health Ray Manufacturing 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 device designated "Twin-Arc Health Ray Sun Lamp," or any product of substantially similar composition 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 advertisement represents, directly or through inference, that said device is a sun lamp; that the ultraviolet rays emitted from such device are comparable to the ultraviolet rays emitted by natural sunlight, or have the same wave lengths or have an intensity equal to or greater than the ultraviolet rays of natural midsummer sunlight; that said device is suitable and safe for home use by the lay individual for the treatment of various bodily ailments and diseases without the direction, supervision or advice of a qualified physician; that said device will give benefits to the skin and general health of the person using it comparable or equivalent to or exceeding that given by natural midsummer sunlight; that the use of such device for home treatment will help build strong bones and teeth, tone up the system, act as a tonic or stimulate the activity of the glands of the body; that use of said device constitutes a cure or remedy for athlete's foot, or is a competent and adequate treatment therefor, or that it will kill the germs or spores causing said condition as they exist in the skin where affected; that the use of such device constitutes a cure, remedy, or competent and adequate treatment for

acne, pimples, and surface skin eruptions, or that its use will cause them to disappear; that its use will build up the bodily resistance or improve the general health of the user; or which advertisement fails to reveal that the unsupervised use of said device by persons not trained in the operation of said device and not skilled in the diagnosis, analysis and methods of treatment of disease may result in severe burns and other serious 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 advertisements contain any of the representations prohibited in paragraph 1 hereof, or which fail to reveal facts material in the light of the representations contained therein, or which fail to reveal that the unsupervised use of said device by persons not trained in the operation of said device and not skilled in the diagnosis, analysis and methods of treatment of disease may result in severe burns and other serious injury to health.

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

BEEMAN'S LABORATORY, INC., AND E. A. RUSH, MRS. J. F. RUSH, AND H. C. ALLEN, 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 4451. Complaint, Jan. 25, 1941—Decision, Mar. 13, 1941

Where a corporation and three individuals, who were its president, vice president and secretary, and director, determined, directed, and administered its business policies and sales activities, or participated in so doing, engaged in interstate sale and distribution of their so-called "BQR" or "BQR Remedy" medicinal preparation; in advertisements which they disseminated and caused to be disseminated in commerce and otherwise through the mails, newspapers, periodicals, radio continuities, and other advertising literature—

Represented, directly and by implication, that said "BQR" preparation possessed value in preventing colds and cold infection, constituted a cure and remedy or competent and effective treatment for colds, and would overcome cold discomforts and the misery of tough colds; facts being "BQR" was nothing more than a laxative with mild analgesic properties, had no curative effect on the underlying factors which cause colds, would not prevent colds, and had no therapeutic value in the treatment of colds in excess of furnishing temporary relief from some of the symptoms often associated therewith by reason of its analgesic properties and of furnishing a laxative action to the bowels, and would not accomplish other results claimed therefor as above set forth;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such false representations of its said product were true, and of inducing thereby its purchase 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. John W. Carter, 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 Beeman's Laboratory, Inc., a corporation; E. A. Rush, individually and as president of Beeman's Laboratory, Inc.; Mrs. J. F. Rush, individually and as vice president and secretary of Beeman's Laboratory, Inc.; and H.

C. Allen, individually and as director of Beeman's Laboratory, Inc., 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, Beeman's Laboratory, Inc., is a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business located at 70 Central Avenue SW., Atlanta, Ga.

The respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, all of Atlanta, Ga., are the president, vice president and secretary, and director, respectively of the respondent, Beeman's Laboratory, Inc., with their office and principal place of business located at 70 Central Avenue SW., Atlanta, Ga.

PAR. 2. Respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, determine, direct, and administer, or participate in determining, directing, and administering the business policies and sales activities of the respondent, Beeman's Laboratory, Inc., as hereinafter set forth.

PAR. 3. Respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, acting as aforesaid, are now, and for more than 1 year last past have been, engaged in the sale and distribution of a medicinal preparation designated as "BQR," and as "BQR-Remedy" in commerce among and between the various States of the United States.

Respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, acting as aforesaid, cause said medicinal preparation when sold to be transported from respondents' place of business in the State of Georgia to purchasers thereof located in various other States of the United States.

Respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, acting as aforesaid, maintain and at all times mentioned herein have maintained, a course of trade in the said medicinal preparation in commerce between and among the various States of the United States.

PAR. 4. In the course and conduct of their aforesaid business, respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, acting as aforesaid, 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 and by various other means in commerce, as commerce is defined by the Federal Trade Commis-

sion Act; and respondents as aforesaid have also disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparation in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false statements and representations contained in the aforesaid advertisements, disseminated and caused to be disseminated by the United States mails and by advertisements in newspapers and periodicals, by radio continuities, and by other advertising literature, are the following:

B. Q. R. Remedy Fights Colds.

During unseasonal weather periods keep B. Q. R. Cold Remedy on hand for use in preventing colds.

* * * The danger of cold infection is greater; hence it is wise to keep at hand reliable tested remedy which has been used successfully by thousands of people * * *.

Fight those cold discomforts with the fighting cold remedy—BQR—and remember it takes a fighting cold remedy to lick the misery of a tough cold.

Get BQR—the fighting cold remedy—for your nagging cold discomforts * * *.

Through the use of the statements and representations hereinabove set forth and in other statements and representations not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of the aforesaid preparation, the said respondents, as aforesaid, represent directly and by implication that their said preparation possesses value in preventing colds and cold infection; that it is a cure and a remedy for colds and will overcome cold discomforts and the misery of tough colds; and that it constitutes a competent and effective treatment for colds.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' preparation is nothing more than that of a laxative having mild analgesic properties. This preparation has no curative action on the underlying factors that cause colds, and it will not prevent colds or cold infection. It is not a cure or remedy for colds, and will not overcome cold discomfort or the misery of tough colds. It has no therapeutic value in the treatment of such condition in excess of furnishing temporary relief from some of the symptoms often associated with colds and of furnishing a laxative action of the bowels.

PAR. 6. The use by the said respondents, as aforesaid, of the foregoing false, deceptive, and misleading statements and representations, and others of a similar nature, disseminated as aforesaid, has had and

now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparation.

PAR. 7. The aforesaid acts and practices of the said respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 25th day of January 1941, issued, and on the 27th day of January 1941, served, its complaint in this proceeding upon respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, individually, and as president, vice president and secretary, and director, respectively, of respondent, Beeman's Laboratory, Inc., charging said respondents with unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

On February 15, 1941, respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, jointly and severally in their individual capacities and as president, vice president and secretary, and director, respectively, of Beeman's Laboratory, Inc., filed their answer in which 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 and waived the filing of briefs and the presentation of oral argument.

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, Beeman's Laboratory, Inc., is a corporation organized and existing under the laws of the State of Georgia with its principal office and place of business located at 70 Central Avenue SW., Atlanta, Ga.

Respondents E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, are the president, vice president and secretary, and director, respectively, of respondent, Beeman's Laboratory, Inc., with their office and principal place of business located at 70 Central Avenue SW., Atlanta, Ga. These respondents determine, direct, and administer, or participate in determining, directing, and administering, the business policies and sales activities of respondent, Beeman's Laboratory, Inc.

PAR. 2. Respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, as aforesaid, are now and for more than 1 year last past have been engaged in the sale and distribution in commerce between and among the various States of the United States of a medicinal preparation designated "BQR" and "BQR Remedy."

The said respondents cause the said medicinal preparation, when sold, to be transported from their said place of business in Georgia to purchasers thereof located in various other States of the United States, and they maintain and at all times mentioned herein have maintained a course of trade in the said medicinal preparation, designated as aforesaid, in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, as aforesaid, have disseminated and are now disseminating, and have caused and are now causing, the dissemination of false advertisements, concerning their aforesaid medicinal preparation, by the United States mails, and by various other means in commerce as commerce is defined by the Federal Trade Commission Act; and respondents, as aforesaid, have also disseminated, and are now disseminating, and have caused and are now causing, the dissemination of false advertisements concerning the aforesaid medicinal preparation, designated as aforesaid, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said medicinal preparation, in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated by the United States mails, by advertisements in newspapers, periodicals, radio continuities, and other advertising literature, are the following:

BQR Remedy Fights Colds.

During unseasonal weather * * * keep BQR Cold Remedy on hand for use in preventing colds.

* * * The danger of cold infection is greater; hence it is wise to keep at hand a reliable tested remedy which has been used successfully by thousands of people * * *.

Fight those cold discomforts with the fighting cold remedy—BQR—and remember it takes a fighting cold remedy to lick the misery of a tough cold.

Get BQR—the fighting cold remedy—for your nagging cold discomforts * * *.

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 purporting to be descriptive of the therapeutic properties of the aforesaid medicinal preparation, respondents represent, directly and by implication, that said preparation "BQR" possesses value in preventing colds and cold infection; that it is a cure and remedy for colds and will overcome cold discomforts and the misery of tough colds; and that it constitutes a competent and effective treatment for colds.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. Respondents' preparation "BQR" is nothing more than a laxative having mild analgesic properties. It has no curative action on the underlying factors that cause colds and it will not prevent colds or cold infection. It is not a cure or remedy for colds, and will not overcome cold discomforts or the misery of tough colds. Said preparation has no therapeutic value in the treatment of colds in excess of furnishing temporary relief from some of the symptoms often associated with colds by reason of its analgesic properties and of furnishing a laxative action to the bowels.

PAR. 6. The use by the said respondents of the foregoing false, deceptive, and misleading statements and representations, and others of a similar nature, with respect to their aforesaid preparation "BQR," sometimes otherwise designated as "BQR Remedy," disseminated as aforesaid, has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said preparation.

CONCLUSION

The aforesaid acts and practices of the said respondents, as aforesaid, 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 joint and separate 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 respondents, Beeman's Laboratory, Inc., and its officers, and E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their medicinal preparation "BQR," or any other preparation of substantially similar composition 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 mail 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 respondents' medicinal preparation "BQR"—

(*a*) Is a cure or remedy for colds.

(*b*) Will prevent colds or cold infection.

(*c*) Has any curative value on the underlying factors which cause colds.

(*d*) Will overcome cold discomforts or the misery of tough colds.

(*e*) Constitutes a competent and effective treatment for colds.

(*f*) Has any therapeutic value in the treatment of colds in excess of that furnished by a laxative and a mild analgesic.

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 medicinal preparation "BQR," 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

AMERICAN MAIZE-PRODUCTS COMPANY

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

Docket 3805. Complaint, June 1, 1939—Decision, Mar. 15, 1941

Where a corporation engaged in manufacture of glucose or corn sirup unmixed, and in distribution and interstate sale thereof, mainly to candy manufacturer purchasers competitively engaged in sale to various customers, including chain stores, wholesalers, and retailers of candy, in the production of many kinds of which said sirup is one of major raw materials used, accounting for as much as 90 percent of weight of some varieties and for a substantial part of the total cost of manufacture—

(*a*) Sold its said sirup at its old and lower prices to some purchasers, while concurrently selling such sirup of like grade and quality to other purchasers at its new and higher prices, which exceeded by from 5 to 55 cents per hundredweight the old and lower figures; and

(*b*) Sold and delivered its said sirup of like grade and quality to purchasers in several types and sizes of containers at prices per hundredweight which increased over the tank-car price per hundredweight according to size and type of container, with differentials ranging from 33 cents for barrels to $1.08 for 5-gallon kegs, and from 10 cents for tank wagons and 13 cents for returnable drums to 33 cents for such drums, depending on presence or absence of return freight thereon and amount thereof;

With result that, through selling its said sirup at said varying prices, not shown by it as made in good faith to meet the equally low price of a competitor, and differences between which it did not justify, it discriminated in price between such purchasers who paid said various differing prices, costs of unfavored purchasers were increased over those of favored purchasers directly as the amount of the discrimination between them and the sirup content of the candy increased, necessitating substantially lower profits for such unfavored purchasers than would be the case in the absence of said discrimination, whether through absorption by them of higher sirup costs in event of their continued sale of their product at prices competitive with those of the favored purchasers, or through necessarily diminished sales, idle plant capacity, and increased overhead in the event of increase in price of their product to cover such higher costs; and

With result that, by reason of diminished ability of unfavored candy manufacturers paying said higher prices to compete, due to loss of profits as above set forth in the sale of their products, with those manufacturers paying the lower prices for such sirup, effect of such discriminations might be substantially to lessen competition between favored and unfavored purchasers, tend to create a monopoly in former, and injure, destroy, and prevent competition therewith:

Held, That in discriminating in price between different purchasers of glucose, as above set forth, said corporation violated provisions of sec. 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Frank Hier and *Mr. P. R. Layton* for the Commission.

Hall, Cunningham, Jackson & Haywood, 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, American Maize-Products Co., is a corporation organized and existing under the laws of Maine with its principal office and place of business at 100 East Forty-second Street in the city of New York and State of New York.

PAR. 2. Respondent owns and operates a plant at Roby, Ind. This plant has a corn-grinding capacity in excess of 35,000 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 sirup; 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 sirup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of sirups.

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 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 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 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, American Maize-Products Co., charging it with discriminating in prices between different purchasers of respondent's various products in violation of subsection (*a*) of section 2 of said act, as amended.

Thereafter, on June 23, 1939, motion of the respondent was filed asking that the complaint be made more definite and certain, or, in the alternative, that the respondent be served with a bill of particulars specifying the acts complained of, or, in the alternative, that the complaint be dismissed, which said motion was denied by order of the Commission on June 30, 1939. On June 23, 1939, respondent likewise filed its answer to the complaint. Thereafter, on December 18, 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 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 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, American Maize-Products Co., is a corporation organized and existing under the laws of the State of Maine with its principal office and place of business at 100 East Forty-second Street in the city and 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 sirup 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 Roby,

Ind., which has a corn-grinding capacity in excess of 35,000 bushels per 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 sirup unmixed at said plant and has sold and shipped and does now sell and ship such glucose or corn sirup unmixed, in commerce between and among the various States of the United States from Roby, Ind., to purchasers thereof located in other States, and in competition with other corporations engaged in similar lines of commerce.

PAR. 4. Most of such purchasers so located purchase such sirup which is of like grade and quality for use in the manufacture of candy, and 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. Respondent, since June 19, 1936, and while engaged in commerce as aforesaid after increasing the price of such sirup, has sold the same to some purchasers thereof at the former and lower price while concurrently selling such sirup of like grade and quality to other purchasers at the new and higher price. The differences between the former and lower prices and the new and higher prices referred to have varied from 5 to 55 cents per hundredweight.

PAR. 6. At all times since June 19, 1936, and while engaged in commerce as aforesaid, respondent has also sold and delivered such sirup of like grade and quality to purchasers in several types and sizes of containers at prices per hundredweight which increase over the tank car price per hundredweight according to the size and type of container as follows:

Container	Price per hundredweight over tank-car price per hundredweight	
Tank wagons	$0.10	
Returnable drums	0.13	Where there is no return freight on empty drums.
Do	0.18	Where the return freight on empty drums is between 50 and 75 cents per hundredweight.
Do	0.23	Where the return freight on empty drums is between 76 and 90 cents per hundredweight.
Do	0.28	Where the return freight on empty drums is between 91 cents and $1.
Do	0.33	Where the return freight on empty drums is more than $1.
Barrels	0.33	
Half barrels	0.58	
10-gallon kegs	0.98	
5-gallon kegs	1.08	

PAR. 7. By selling such sirup at said different prices as found in paragraphs 5 and 6 above respondent has discriminated in price between such purchasers who have paid the various different prices. Respondent has not justified such differences nor shown that any of such prices were made in good faith to meet the equally low price of a competitor.

PAR. 8. Such sirup 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 sirup 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 sirup 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 sirup 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 sirup 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 sirup 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 sirup costs or from loss of sales resulting from increasing prices to recover such higher sirup costs would generally diminish the ability of those candy manufacturers paying the higher prices for such sirup to

compete in the sale of their products with candy manufacturers paying the lower prices for such sirup.

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, American Maize-Products Co., 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, American Maize-Products Co., 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 the 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, sec. 13).

It is ordered, That respondent, American Maize-Products Co., a corporation, its officers, directors, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of glucose or corn sirup 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 sirup unmixed of like grade and quality, either directly or indirectly, in the manner and degree as found in paragraphs 5 and 6 of the Commission's findings as to the facts and conclusion;

from continuing or resuming such discriminations in price as so found by the Commission and from otherwise discriminating in price in manner and degree substantially similar to such discriminations as so found by the Commission.

2. From otherwise selling said product 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, providing that nothing shall prevent price differences which make only due allowances 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 any equally low price of a competitor.

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

IN THE MATTER OF

LOUIS GOLDENBERG, MORRIS ZIPPER AND HARRY FAERMAN, TRADING AS DIAMOND CAP COMPANY

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

Docket 3230. Complaint, Sept. 24, 1937—Decision, Mar. 19, 1941

Where three individuals engaged in manufacture of caps from felts and other materials obtained from old, used, and second-hand hats purchased from various sources and thereafter cleaned, steamed, ironed, dyed, and shaped by them into the form of caps, which were fitted with new visors, buttons, trimmings, sweatbands, and size labels so that they had the appearance of new caps made from felt materials which had never been worn or used, and in interstate sale and distribution of said products in substantial competition with others, including manufacturers of such articles from new materials—

Sold their said caps with no disclosure in invoicing and billing, and with no label, marking, or designation of any kind to indicate that they were made from old hat bodies, to retailers, jobbers, and wholesalers by whom said caps were resold to purchasing public without disclosing in any way the fact that they were made from previously worn felts;

With the result that they were enabled to and did undersell manufacturers who produced similar caps from felt and other materials which were entirely new, and with tendency and capacity to induce many wholesale and retail dealers and a substantial portion of purchasing public to purchase their products manufactured from old materials in the erroneous and mistaken belief that they were made from new and unused materials, and, as direct consequence of such erroneous belief to divert trade unfairly to themselves from competitors, of whom many did not misrepresent the quality, kind, or type of material of which their caps were made:

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

Mr. George Foulkes and *Mr. Robert Mathis, Jr.*, for the Commission.

Mr. Charles P. Bloome and *Mr. Samuel R. Wurtman*, of Philadelphia, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commis-

sion, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Louis Goldberg, Morris Zipper, and Harry Faerman, individuals, trading as Diamond Cap Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Louis Goldberg, Morris Zipper, and Harry Faerman, individuals, do business under the trade name and style of Diamond Cap Co., with their office and principal place of business located at 2000 South Ninth Street, Philadelphia, Pa. Respondents are now, and for more than 1 year last past have been, engaged in the business of manufacturing caps and hats from felts and other materials obtained from old, used, and second-hand hats, and of selling the same to retailers, jobbers, and wholesale dealers thereof located in the various States of the United States. Respondents cause, and for more than 1 year last past have caused, such caps and hats to be transported from their place of business in Philadelphia to the aforesaid purchasers thereof located in various other States of the United States. In the course and conduct of their business, respondents are now, and have been, in substantial competition with other individuals, corporations, firms, and partnerships engaged in the business of manufacturing and selling new caps and hats or caps and hats similar to those sold by respondents in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business described in paragraph 1 hereof, respondents for more than 1 year last past have bought and still buy second-hand, old, and used felt hats. The second-hand, old, and used felt hats are cleaned, steamed, ironed, and shaped by respondents and then fitted with new trimmings, sweat bands, size labels, and in some cases with peaks or visors, and sold by respondents to retailers, who resell the same to the purchasing public, and to jobbers and wholesale dealers who resell them to retail dealers, who in turn resell said products to the purchasing public.

PAR. 3. The aforesaid old, used, and second-hand hats and caps, after having been made over by respondents into caps and hats with new trimmings as described in paragraph 2 hereof, have the appearance of new caps and hats, manufactured from felts which had never

been worn, and said caps and hats are sold by respondents to retailers and to jobbers and wholesale dealers without any label, marking, or designation on or about said caps and hats to indicate that said caps and hats are in fact manufactured from second-hand materials, which have been renovated and made over by respondents. Said caps and hats sold to jobbers and wholesale dealers are resold by said jobbers and wholesale dealers to retail dealers, who resell them to the public without disclosing the fact that said caps and hats are manufactured from felts previously worn and then renovated and made over, and other used materials, and under such circumstances as to indicate that they are new caps and hats.

The cost to respondents of obtaining, renovating, and making over said old, and previously used hats into caps and hats as aforesaid is much less than the cost to manufacturers of manufacturing new caps and hats of similar quality and respondents are thereby able to sell said caps and hats to retailers, jobbers, and wholesalers and through them to the purchasing public at substantially lower prices than manufacturers of new caps and hats can sell caps and hats of the same or similar quality to retailers, jobbers, and wholesale dealers, and through said dealers to the using public.

PAR. 4. The acts and practices of respondents as hereinabove set forth had, and now have, a tendency and capacity to induce many wholesale and retail dealers and many of the purchasing public to purchase said caps and hats manufactured from old, and used hats which have been renovated and made over by respondents, in the mistaken belief that they are purchasing new and unused caps and hats manufactured from new and unused materials. Further, as a direct consequence of the mistaken and erroneous belief induced by the practices aforesaid, a number of the consuming public purchased a substantial volume of respondents' caps and hats with the result that trade has been unfairly diverted to respondents from individuals, firms, and corporations likewise engaged in the business of selling and manufacturing caps and hats who do not misrepresent the quality and type of material out of which their hats and caps are made. As a result thereof, substantial injury has been done, and is now being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

intent of section 5 of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 24, 1937, issued and subsequently served its complaint in this proceeding upon respondents, Louis Goldenberg (referred to in the complaint as Louis Goldberg), Morris Zipper, and Harry Faerman, trading as Diamond Cap 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 and in opposition to the allegations of the complaint were introduced before examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and oral arguments of Robert Mathis, Jr., counsel for the Commission, and Samuel R. Wurtman, counsel for respondents; and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondents, Louis Goldenberg, Morris Zipper, and Harry Faerman, are individuals trading as Diamond Cap Co., with their office and principal place of business now located at Fourth and Somerset Streets in the city of Philadelphia, State of Pennsylvania.

The Commission finds that the Louis Goldberg referred to in the complaint and the Louis Goldenberg referred to herein are in fact one and the same person, the correct name being Louis Goldenberg.

Respondents for more than 7 years last past have been engaged in the business of manufacturing caps from felts and other materials obtained from old, used, and second-hand hats, and of selling the same to retailers, jobbers and wholesale dealers located in the various States of the United States and in the District of Columbia. Respondents cause, and for more than seven years last past have caused,

such caps, when sold, to be transported from their place of business in Philadelphia, Pa., to the aforesaid purchasers thereof located in various other States of the United States and in the District of Columbia. In the course and conduct of their business respondents are in substantial competition with other individuals, and with firms and corporations engaged in the business of manufacturing caps from new materials and with others manufacturing caps from materials similar to those used by respondents, and in the sale and distribution thereof in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business respondents buy and use old, used, and second-hand felt hats from various sources, including Good-Will Industries which source handles only used merchandise. The felt from such hats is cleaned, steamed, ironed, dyed, and shaped by respondents into the form of caps, which caps are thereafter fitted with new visors, buttons, trimmings, sweatbands, and size labels.

PAR. 3. The Commission finds that the caps thus made by respondents have the appearance of new caps manufactured from felt material which has never been worn or used. In invoicing and billing purchasers respondents do not disclose that their products are made from old, worn, and previously used hat bodies. In such invoices and bills respondents' products are usually designated by numbers only. The respondents sell such caps made of second-hand material as aforesaid to retailers. jobbers, and wholesale dealers without any label, marking, or designation of any kind to indicate or disclose that such caps are in fact manufactured from second-hand felt material. Such dealers then resell said caps to the purchasing public without disclosing in any way the fact that they are manufactured from felts which have been previously worn.

By reason of the use of these methods and practices, the respondents are enabled to and do undersell manufacturers who produce similar caps from felt and other materials which are entirely new.

PAR. 4. The acts and practices of respondents as hereinabove set out have the tendency and capacity to induce many wholesale and retail dealers and a substantial portion of the purchasing public to purchase respondents' products manufactured from old, second-hand, and previously used materials in the erroneous and mistaken belief that they are purchasing caps manufactured from new and unused materials. As a direct consequence of this erroneous and mistaken belief induced by the practices set forth above, trade has been and is diverted unfairly to respondents from their competitors, many of

whom do not misrepresent the quality, kind, or type of material of which their caps are made.

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 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 argument by Robert Mathis, Jr., counsel for the Commission, and by Samuel R. Wurtman, counsel for the respondents; and the Commission having made its finding 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, Louis Goldenberg, Morris Zipper, and Harry Faerman, individually and trading as Diamond Cap 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 caps in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that caps composed in whole or in part of used, worn, or second-hand materials are new or are composed of new materials, by failure to stamp on the sweatbands thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweatbands, a statement that said caps are composed of second-hand or used materials, provided that if sweatbands are not affixed to such caps then such stamping must appear on the bodies of such caps in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

2. Representing in any manner that caps made in whole or in part from old, used, worn, or second-hand materials are new or are composed of new materials.

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

IN THE MATTER OF

EUCOZONE LABORATORIES, INC., AND UNIVERSAL EUCOZONE OF AMERICA, INC.[1]

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

Docket 3478. Complaint, July 9, 1938—Decision, Mar. 19, 1941

Where a corporation engaged as predecessor in interest to successor concern which, with its consent, was joined in instant proceedings and undertook to be bound by proceedings therein and by such order as might be entered, engaged in manufacture, under patent formula, of its "Eucozone" product in liquid, capsule, ointment, and nose drop form, and in competitive interstate sale and distribution thereof to, chiefly, wholesale druggists and chain stores; in its advertising in various newspapers and periodicals published throughout the United States—

(*a*) Represented that its said "Eucozone" was an ozonide of eucalyptol, "a new strikingly efficient antiseptic, equal in germicidal strength to pure carbolic acid" against types of micro-organisms causing body surface infections and symptoms usually incident to described diseases and conditions, and that the antiseptic action thereof was due to the active oxygen released by use of its special patented formula, whereby oil of eucalyptus was broken down into vapor and brought under temperatures and pressures whereby it absorbed the ozone and in turn released active oxygen;

Facts being said preparation had no properties other than these possessed by oil of eucalyptus and was not an ozonide of eucalyptol nor a holder or carrier of active or nascent oxygen, and was not a germicide; and therapeutic properties thereof were limited to those of a mild antiseptic and counter-irritant, which would not kill streptococcus or other dangerous germs which cause infections of the nose and throat; and

(*b*) Represented, more specifically, that said product reached "right down to the tissues of the injured areas liberating active oxygen, thus destroying harmful germs," and was "Remarkable, too, for sore throats," destroying "streptococcus and a number of other dangerous germs," and was "Ideally suited for throat infections," and that in capsules it was "used for a wide variety of internal purposes—including colds, bronchitis, strep throat, etc.," and that such capsules acted "as a general internal antiseptic by supplying active oxygen to the blood stream;"

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[1] The Commission by order dated July 16, 1940 (1) joined Universal Eucozone of America, Inc., as additional party respondent; (2) provided that testimony and other evidence be considered as though they had been originally taken subsequent to such joining; and (3) allowed said named respondent 20 days within which to request holding of hearings to rebut testimony theretofore taken in support of the allegations of the complaint and 60 days within which to file brief in opposition to allegations of the complaint; it appearing that said Universal Eucozone of America, Inc., was successor in interest to respondent Eucozone Laboratories, Inc., and was willing to enter its appearance and to be bound by evidence already adduced against the respondent Eucozone Laboratories, Inc., in so far as it affected the various products involved.

(*c*) Represented that in nose drops it aided "in relieving the discomforts of colds, catarrh, sinus infection, hay fever, rose fever, etc.," and that as a rub it was "for cases of localized congestions and inflammations—particularly of head, throat, chest, back, and joints," which stimulated and increased "circulation in affected areas;" and

(*d*) Represented that in ointment form it was "recommended in cases of athlete's foot, itch, carbuncles, and wet or dry skin irritations. Recommended in cases of itching, burning, piles, etc;"

Facts being that, as aforesaid, it was not a carrier of oxygen which would kill dangerous germs, etc., nor an internal antiseptic, which would supply active oxygen to blood stream, nor, taken in form of capsules, would it have any therapeutic effect in treatment of colds and other ailments set forth, nor would it have any such value in form of nose drops for colds, catarrh, and other conditions claimed or discomforts associated therewith, in excess of that afforded by mild counter-irritant, and would not be effective in destroying micro-organisms responsible for athlete's foot and other conditions claimed, but, by reason of its irritant action, would make such conditions worse, and, for same reason, did not have any beneficial effect as a rectal ointment in case of itching and burning piles; it could not be regarded as nonpoisonous and, if taken in excessive doses, might be injurious;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false representations were true, and of causing it, because of said erroneous belief, to purchase said product, whereby trade was diverted unfairly to it from its competitors who truthfully advertise 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 in commerce.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Sabath & Sabath, of Chicago, Ill., and *Mr. Charles E. Gallup*, of Detroit, Mich., 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 Eucozone 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 is a corporation organized, existing, and doing business under the laws of the State of Michigan, with its principal office and place of business at 429 Wayne Street, in

the city of Detroit, in said State. It is now, and for more than 1 year last past has been engaged in the business of manufacturing and selling, in constant course of trade and commerce between and among the various states of the United States and in the District of Columbia an alleged proprietary remedy, known as "Eucozone," the formula for which is described as "Eucalyptus Oil Ozonated," under United States Patent 1,585,602, of May 18, 1926, which patent was issued to one Alexander S. Ramage, upon application filed April 6, 1923. This preparation is sold by respondent for intended use in the alleviation, remedy and treatment of sore throats, throat infections, colds, bronchitis, streptococcic throat, catarrh, sinus infections, and various other diseases and conditions.

In the course and conduct of its said business, it causes said product when sold to be transported from the State of Michigan into and through various other States of the United States to the purchasers thereof, namely, wholesale druggists and chain stores located in States of the United States other than the State of Michigan, and in the District of Columbia; and in the conduct of its said business, respondent is, and has been at all times mentioned herein, in substantial competition with other corporations and with individuals, partnerships, and firms likewise engaged in the sale of alleged proprietary remedies, drugs, medicines, antiseptics, and formulae intended for use and application in the alleviation, prevention and treatment of sore throats, throat infections, colds, bronchitis, streptococcic throat, catarrh, sinus infections, and various other diseases and conditions.

PAR. 2. In the course and conduct of its business as aforesaid, by advertisements in various magazines, newspapers, and other periodicals, and by radio broadcasts, respondent publishes throughout the United States certain advertising claims with respect to its said alleged proprietary remedy, for the purpose of inducing the sale thereof in interstate commerce. In such advertising claims, respondent has represented and respresents that its said product is an ozonide of eucalyptol, with a substantial portion of oxygen-liberating substance, which is antiseptic in a diluted condition and of equal germicidal strength to pure carbolic acid against the types of microorganisms capable of causing body surface infections constituting the symptoms usually incident to the foregoing described diseases and conditions of the human body. Respondent also has represented and represents that the antiseptic action of such product is due to its eucalyptol content; that it is safe for children to use, and that it

constitutes a competent remedy and adequate treatment for the alleviation of the following symptoms, diseases and conditions, to wit:

* * * Sore throats, throat infections, colds, bronchitis, streptococcic throat, catarrh, sinus infections, hay fever, rose fever, irritated and congested tissues, localized congestion of head, throat, chest, back and joints, athlete's foot, itch, carbuncles, wet or dry skin irritations, itching or burning piles.

Included among such advertising claims aforesaid, and to the same purpose and effect, respondent has published the following claims:

EUCOZONE, a new strikingly efficient antiseptic equal in germicidal strength to pure carbolic acid and yet sufficiently non-toxic and non-irritating that it is given for internal use in limited doses.

Remarkable, too, for sore throats, EUCOZONE destroys streptococcus and a number of other dangerous germs. Ideally suited for throat infection.

EUCOZONE IN NOSE DROPS: These nose drops aid in relieving the discomforts of colds, catarrh, sinus infections, hay fever, rose fever, etc.

EUCOZONE IN RUB: For cases of localized congestion and inflammations—particularly of head, throat, chest, back and joints. Stimulates and increases circulation in affected areas.

EUCOZONE IN RECTAL OINTMENT: Recommended in cases of itching, burning piles, etc.

300 times as effective as ordinary germicides! That's EUCOZONE.

Yes! It's safe even for baby!

Head colds—tonsillitis—bronchitis—are running wild in Detroit. But people who use the great scientific discovery, Eu-Co-Zone, are finding QUICK, SATISFACTORY and SAFE relief.

Eu-Co-Zone penetrates deeply with pure, germ killing *active oxygen* and is safe for children to use.

That ideal purifier * * * for preventing and relieving head colds, throat infections, bronchitis, influenza and asthma.

New quick cold killer.

EUCOZONE is eucalyptol combined with ozone by an exclusive patented process, forming an ozonide of eucalyptol.

EUCOZONE clears the head—soothes the throat—eases the chest—quiets the aches—and pulls down the fever with a speed that's amazing.

PAR. 3. The foregoing representations by respondent published and made are false and misleading in that said Eucozone is not and does not constitute a competent remedy nor adequate treatment for the alleviation of the aforesaid symptoms, diseases, and conditions; in that said Eucozone is not an ozonide of eucalyptol, has but very little oxidizing substance, is not equal in germicidal strength to pure carbolic acid against the types of micro-organisms capable of causing infections on the surface of the body, and, while it has some germicidal properties, it will not kill all types of germs; in that it is not highly penetrative, does not liberate active oxygen, does not destroy streptococcus and other harmful germs, is not 300 times as effective

as ordinary germicides, is not a "quick" cold killer or a cold killer at all; in that it does not stimulate and increase circulation in human tissues, and does not afford quick, satisfactory, and safe relief for head colds, tonsilitis, or bronchitis. It will not prevent head colds, throat infections, bronchitis, influenza, and asthma. It will not "clear the head," "soothe the throat," "ease the chest," "quiet the aches" or "pull down the fever with a speed that's amazing." It is not safe for children to use by reason that it is composed in part of oil of eucalyptus which is chiefly eucalyptol.

PAR. 4. There are among the competitors of respondent, as referred to in paragraph 1 hereof, other corporations and firms, individuals and partnerships engaged in the sale of remedies, drugs, medicines, antiseptics and formulae in interstate commerce who do not engage in the practice or method of making false and misleading claims with reference to the therapeutic value thereof.

PAR. 5. The foregoing false and misleading representations of respondent above set out have the capacity and tendency to mislead and deceive the immediate purchasers thereof, namely, the wholesale druggists and chain stores to whom respondent sells its said product, and also have the capacity and tendency to place in the hands of such immediate purchasers the means of deceiving the ultimate consumers of said product, to whom such wholesale druggists and chain stores in turn sell said product, into the beliefs that Eucozone is and constitutes a competent remedy and adequate treatment for the alleviation of the above-named symptoms, diseases and conditions, and that the specific representations concerning the results to be obtained from its use are true, and cause the said purchasers and ultimate consumers to purchase respondent's product in preference to the products of respondent's competitors who do not resort to such false and deceptive practices and methods, thereby tending to divert trade from respondent's competitors to respondent and causing substantial injury to competition in interstate commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 9, 1938, issued and served its complaint in this proceeding upon respondent, Eucozone Laboratories,

Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Merle P. Lyon, attorney for the Commission, before Arthur F. Thomas, 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. The respondent was represented by Sabath and Sabath, 33 North LaSalle Street, Chicago, Ill., but no testimony or other evidence was introduced by the respondent in opposition to the allegations of the complaint. Thereafter, on June 19, 1940, the attorneys for the respondent advised the Commission that the respondent Eucozone Laboratories, Inc., had been dissolved, and that a new corporation, Universal Eucozone of America, Inc., had succeeded to the rights of the Eucozone Laboratories, Inc., to manufacture and distribute Eucozone products in the United States, and offered to have this new corporation bound by the proceedings and by any order the Federal Trade Commission might enter. Acting upon said offer, the Commission entered an order dated July 16, 1940, making Universal Eucozone of America, Inc., an additional party respondent for all purposes and further ordered that the testimony theretofore taken be considered to the same extent as if it had been taken subsequent to the joining of Universal Eucozone of America, Inc., as party 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, 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. The original respondent, Eucozone Laboratories, Inc., was a corporation organized in the year 1936 under the laws of the State of Michigan, formerly doing business with its principal office and place of business at 429 Wayne Street, in the city of Detroit, Mich. On September 15, 1939, said respondent filed with the Corporation and Securities Commission of the State of Michigan, Lansing,

Mich., a certificate of dissolution of said corporation, pursuant to an amendment to its articles of incorporation fixing the term to expire July 15, 1939. During the years 1936 and 1937 said respondent advertised extensively in magazines and periodicals of national circulation, including several medical journals and some newspapers, but no advertising was done subsequent to the year 1937. In March of 1937 a resolution was passed by said respondent's board of directors discontinuing the business and stopping all advertising expenditures, and nothing was done by said respondent in the way of manufacture and sale of its products since July 9, 1938. Its total volume of sales during the period of its active corporate existence was only about $4,000. Said respondent manufactured its product "Eucozone" in several forms, a liquid, ointment, and nose drops, under a formula described as "Eucalyptus Oil Ozonated" under United States Patent 1,585,602 issued on May 18, 1926, to one Alexander S. Ramage. This preparation was sold by said respondent for use in the alleviation, remedy, and treatment of sore throats, throat infections, colds, bronchitis, streptococcic throat, catarrh, sinus infections, and various other diseases and conditions.

In the course and conduct of its said business, said respondent, Eucozone Laboratories, Inc., a corporation, caused said product, when sold, to be transported from its place of business in the State of Michigan to purchasers thereof, chiefly wholesale druggists and chain stores located in various other States of the United States and in the District of Columbia. In the conduct of its said business, respondent was in substantial competition with other corporations, and with individuals, firms and partnerships likewise engaged in the sale and distribution in commerce among and between the various States of the United States of proprietary remedies, drugs, and medicines, such as iodine, mercurochrome, peroxide, sodium perborate, Vick's Vaporub, Vick's Nose Drops, and other products generally intended for the alleviation, prevention, and treatment of the various diseases and bodily conditions hereinbefore set out.

The respondent Universal Eucozone of America, Inc., is a corporation organized, existing, and doing business under the laws of the State of Michigan, with its principal office and place of business in the city of Detroit, Mich., and is a successor in interest to Eucozone Laboratories, Inc.

PAR. 2. In the course and conduct of its business as aforesaid, respondent Eucozone Laboratories, Inc., a corporation, by advertisements in various magazines, newspapers, and other periodicals, published throughout the United States certain advertising claims with

respect to its alleged proprietary remedy "Eucozone," for the purpose of inducing the sale thereof in commerce. In such advertising claims, said respondent represented that its said product is an ozonide of eucalyptol, with a substantial portion of oxygen-liberating substance, that it is antiseptic in a diluted condition and of equal germicidal strength to pure carbolic acid against the types of micro-organisms capable of causing body surface infections constituting the symptoms usually incident to the foregoing described diseases and conditions of the human body. Said respondent also represented that the antiseptic action of its product is due to the active oxygen released by the use of its special patented formula, whereby oil of eucalyptus is broken down into vapor and brought under temperatures and pressures whereby it absorbs the ozone and in turn releases active oxygen.

Among the claims published by said respondent as aforesaid, and typical thereof, are the following:

Eucozone, a new strikingly efficient antiseptic equal in germicidal strength to pure carbolic acid, yet sufficiently non-toxic and non-irritating that it is given for internal use in limited doses.

Eucozone is a holder and carrier of an extremely powerful antiseptic agent—active oxygen—which it releases only in the presence of moisture. Highly penetrative, Eucozone reaches right down to the tissues of the injured areas liberating active oxygen, thus destroying harmful germs.

Remarkable, too, for sore throats. Eucozone destroys streptococcus and a number of other dangerous germs. Ideally suited for throat infections.

Eucozone In Capsules: Used for a wide variety of internal purposes—including colds, bronchitis, strep throat, etc. Capsules act as a general internal antiseptic by supplying active oxygen to the blood stream.

Eucozone in Nose Drops:—These nose drops aid in relieving the discomforts of colds, catarrh, sinus infection, hay fever, rose fever, etc.

Eucozone in Rub: For cases of localized congestions and inflammations—particularly of head, throat, chest, back and joints. Stimulates and increases circulation in affected areas.

Eucozone in Ointment: Recommended in cases of athlete's foot, itch, carbuncles and wet or dry skin irritations. Recommended in cases of itching, burning, piles, etc.

Eucozone, a New Strikingly Efficient Antiseptic. Liberates nascent or active oxygen. Eucozone is eucalyptol combined with ozone by an exclusive patented process—forming an ozonide of eucalyptol.

PAR. 3. The foregoing representations of said respondent Eucozone Laboratories, Inc., as well as others of similar import and effect, are false and misleading. Eucozone is not a competent remedy or an adequate treatment for the alleviation of the aforesaid symptoms, diseases and conditions. Based upon the testimony of two chemists who made various tests of Eucozone, the Commission finds that this

preparation has no properties other than those possessed by oil of eucalyptus, and is not an ozonide of eucalyptol, it is not a holder or a carrier of active or nascent oxygen, and will not release or liberate oxygen in the presence of moisture or under any other conditions. The Commission further finds that the product Eucozone is not a germicide but that its therapeutic properties are limited to those of a mild antiseptic and counter-irritant. It will not kill streptococcus or other dangerous germs which cause infections of the nose and throat. This product, when taken internally, is not an internal antiseptic and will not supply active oxygen to the blood stream. The ingestion of this preparation in the form of capsules as recommended in the advertising would have no therapeutic effect in the treatment of colds, bronchitis, streptococcus infections of the throat, or other conditions. Said preparation, when used in the form of nose drops, has no therapeutic value in the treatment of colds, catarrh, sinus infection, rose fever, hay fever, or the discomforts associated therewith, in excess of that afforded by a mild counter-irritant, and may be distinctly objectionable in case of an inflamed and congested mucus membrane. The use of this preparation as a rub would be effective for localized congestions and inflammations only to the extent afforded by a mild irritant. Eucozone has no value in the treatment of athlete's foot, as it is not effective in destroying the mirco-organisms causing such condition, and for such conditions as itch, carbuncles, or wet or dry skin irritations, its irritant action would make such conditions worse, for the same reason it does not have any beneficial effect as a rectal ointment in case of itching and burning piles. This preparation cannot be regarded as nonpoisonous and if taken in excessive doses may be injurious.

PAR. 4. The use by the respondent, Eucozone Laboratories, Inc., of the foregoing false, deceptive, and misleading statements, representations and advertisements with respect to the therapeutic value of this preparation, "Eucozone," has had 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, representations, and advertisements are true and to cause a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparation. As a result trade has been diverted unfairly to the respondent Eucozone Laboratories, Inc., from its competitors who are also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of preparations for use in the treatment of ailments, diseases and conditions for which

said respondent recommended its preparation who truthfully advertise the therapeutic value of their respective preparations.

CONCLUSION

The aforesaid acts and practices of the respondent Eucozone Laboratories, Inc., a corporation, as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal 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 Eucozone Laboratories, Inc., a corporation, 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 brief in support of the allegations of the complaint, and the record herein, and the Commission having made its findings as to facts and its conclusion that said respondent Eucozone Laboratories, Inc., has violated the provisions of the Federal Trade Commission Act and that respondent Universal Eucozone of America, Inc., is the successor in interest of respondent Eucozone Laboratories, Inc.

It is ordered, That the respondent Eucozone Laboratories, Inc., a corporation, and Universal Eucozone of America, Inc., a corporation, successor in interest to Eucozone Laboratories, Inc., and their respective officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their preparation designated "Eucozone," or any product of substantially similar composition 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 representing:

1. That said preparation is an ozonide of eucalyptol or that it has the capacity to or does release active or nascent oxygen in the presence of moisture or under any other conditions.

2. That said preparation possesses any therapeutic properties or elements other than that possessed by ordinary oil of eucalyptus or eucalyptol.

3. That said preparation is a germicide or that it has any therapeutic properties in excess of those of a mild antiseptic and counter-irritant.

4. That said preparation is an internal antiseptic or that it will supply oxygen to the blood stream.

5. That said preparation has any therapeutic value in the treatment of colds, catarrh, sinus infection, rose fever, hay fever, or in the treatment of localized congestion or discomforts associated with such conditions in excess of that afforded by a mild antiseptic and counter-irritant.

6. That said preparation is a cure or remedy for athlete's foot or has any therapeutic value in the treatment of such condition in excess of that afforded by a mild antiseptic.

7. That said preparation has any therapeutic value in the treatment of itch, carbuncles, wet or dry skin irritations, or itching or burning piles.

8. That said preparation is nonpoisonous, nontoxic or nonirritating, or that it is suitable or safe for internal use.

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.

IN THE MATTER OF

ROSEMARIE LEWIS, TRADING AS CERTANE COMPANY AND CERTANE 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 3486. Complaint, July 12, 1938—Decision, Mar. 19, 1941

Where an individual engaged in the manufacture and competitive interstate sale and distribution of certain medicinal preparations for so-called feminine hygiene use and for use in preventing conception, pregnancy, and female diseases, and also in sale of certain syringes, applicators, "Douches," "douche shields," "Dia-Caps," and "Dia-Domes" for use in connection therewith; by means of advertisements disseminated among prospective purchasers by mail, by insertion in newspapers and magazines, and by distribution of books, pamphlets, and other advertising literature—

(*a*) Represented that her various preparations and appliances, if used as directed by her and as illustrated in diagrams in her advertising, were safe, competent, and effective preventives against conception and would prevent pregnancy, and would correct suppressed or delayed menstruation;

(*b*) Represented that her said preparations were composed in whole or in part of ingredients which were effective, among other things, in insuring health and youth to wives and mothers, and kept the body perfectly clean and sanitary and mind free from worry and anxiety, and that use thereof prevented disease, caused rapid elimination of bacteria, and acted as a preventive of female irregularities; and

(*c*) Represented that her said preparations were antiseptic and effective as prophylactics, and healed the delicate membranes of vaginal tract and formed competent and effective treatments for subnormal or unhealthy conditions of the uterus or vagina, nervousness, pain, discomfort, and mental depression;

Facts being that her said preparations, while having some degree of effectiveness, were not competent preventives of conception or pregnancy, would not prevent female irregularities, had no therapeutic value in treatment of subnormal or unhealthy conditions of the uterus or vagina or of symptoms resulting therefrom, and would not prevent diseased conditions claimed, use thereof would not be effective in insuring health, but instead might be detrimental thereto, and particularly so in case of her "Douche Powder" with "Douche Bag," use of which, as directed, might cause salpingitis or even peritonitis, and her said "Dia-Caps" or "Dia-Domes," commonly known as diaphragms, would, without special instructions, and fitting, afford little or no protection against conception or pregnancy;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into the erroneous belief that such representations were true, and to induce it, by reason thereof, to purchase her said preparations and appliances, whereby trade was diverted unfairly from her competitors to her:

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

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. Reuben J. Martin, *Mr. DeWitt T. Puckett*, and *Mr. William L. Taggart* for the Commission.

Mr. Daniel Dougherty, of Los Angeles, Calif., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Rosemarie Lewis, individually, and trading as Certane Co. and the Certane Co., Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. The respondent, Rosemarie Lewis, individually, and trading as Certane Co., has been, and is 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. Her place of business is located at 1212 West Washington Boulevard, Los Angeles, Calif.

The Certane Co., Inc., is a California corporation with its principal place of business at 1212 West Washington Boulevard, Los Angeles, Calif. Rosemarie Lewis is its principal officer and directs its sales policies and business operations.

The respondents cause their products, when sold, to be transported from their aforesaid place 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. Respondents 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 and in the District of Columbia.

In the course and conduct of said business, respondents have been, and are, in substantial competition with other individuals and with firms, corporations and partnerships engaged in the distribution and sale of similar 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 "Certane." An assortment of said products consists of douche powder, ointment, jelly, syringe, applicator, vaginal diaphragm, and vaginal cones 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 products and in some instances all of them. Some of the aforesaid advertising literature describes and makes certain representations as to the efficacy of the products of respondent.

PAR. 4. For the purpose of selling and distributing their products, respondents publish and cause to be published as a part of their advertising, a booklet entitled:

WOMEN'S SECRETS
A confidential
Discussion of
FEMININE
HYGIENE
by
Rose Marie Lewis

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

"Through my investigation, I found that Certane, a product of years of research by laboratory specialists, was the one Feminine Hygiene highly recommended by many physicians and nurses, and also by thousands of women who have used it with such satisfying results."

Certane assures you of a method that is safe and dependable in quality, easy to use and economical to purchase. * * *

Your own physician can approve the use of every ingredient combined in the Certane Method of Feminine Hygiene.

* * * * * * *

Suppressed or Delayed Menstruation

Any abnormal or diseased condition should be treated by a reliable physician. Where the delayed menstruation is the result of exposure to cold or similar indiscretions, the effect of a warm, medicated douche is an aid to nature in relieving the congestion.

The most beneficial results are obtained by use of the "ballooning" douche, with the water at a temperature, according to physicians, of 120 to 125 degrees F. The solution, to which Certane Douche Powder should be added, must be retained for from 15 minutes to half an hour. Full ballooning of the vaginal

walls is imperative, as only in this way can the many folds and linings be reached by the douche. Use this treatment twice a day, a day or so before the customary flow period, continuing until relief from the congestion is obtained.

* * * * * * *

Certane Jelly, because of its proper consistence, clings to the tissues and readily spreads into the many folds and crevices of the vaginal tract, forming a film over the mucous membrane, and remaining for hours in effective contact.

You can depend on this product as being safe to use. Its action, persisting for hours, makes its usefullness obvious to every woman.

WHAT MODERN CLINICS ARE USING

As an accommodation to those who desire added precaution, Certane offers the uterine medicator, either the Dia-Cap or Dia-Dome, separately illustrated and described, as a scientific and convenient method of holding medication in contact with the cervix or mouth of the womb. This method is endorsed by medical science and is today the foremost method used in hygiene clinics. * * * * * * Once properly inserted, and after a short time in use, the wearing of Certane Dia-Cap or Dia-Dome is unnoticed. There is not the slightest feeling of discomfort and it offers no obstacle to the normal functioning of the vaginal canal.

Nor is there any risk connected with the use of either the Certane Dia-Cap or Dia-Dome. It cannot be "lost" in the vaginal tract and is easily removed.

CERTANE DIA-CAP * * * *needs no fitting*

New and entirely revolutionary in design, made to fit all normal women, Certane Dia-Cap is especially favored by physicians.

* * * * * * *

It fits over the mouth of the cervix and lodges itself into the folds of the vaginal canal, completely blocking off the cervix, where it is held firmly in place by suction. When properly inserted there is no sensation of discomfort. The one size fits all normal women. Made exclusively by Certane Co., Inc.

* * * * * * *

Certane Antiseptic Powder is applied dry and sprayed into the vaginal tract. It is a recognized antiseptic compound, which is easily dissolved in the natural secretions of the vaginal tract. It penetrates and bathes both the tissues and delicate membranes and its action remains in effective contact for as many hours as it is retained in the vaginal tract. It is most active five to ten minutes after application, which allows time for dissolving.

The inclusion of this antiseptic in Certane assures you of a method of feminine hygiene that is safe from harmful poisons, dependable in quality, easy to use and economical to purchase.

Thousands of women have used Certane exclusively for years, to the exclusion of other products for which the manufacturers have claimed "just as good" qualities. We have in our files hundreds of unsolicited testimonials from women everywhere who have used it with such splendid results.

Certane has been laboratory tested by professional chemists and their reports establish its merited reputation (copy of laboratory report furnished any physician upon request).

But better than any laboratory test is the unanimous praise of those women who have used it with such gratifying satisfaction. It is recognized, both theoretically and practically, as one type method of feminine hygiene that meets the test of the most exacting use. This is because, in addition to the splendid reliable quality of its antiseptic ingredients, there is also the smooth, soothing texture of the jelly carrier itself. It melts at low temperature so that it quickly spreads at body heat. There is no tell-tale odor to linger and embarrass. Many physicians who have observed its excellent performance under actual application, recommended Certane exclusively to their patients.

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 antiseptic and effective as prophylactic, that they 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, nervousness, pain and discomfort, and mental depression.

PAR. 5. The aforesaid statements and representations used by the respondents in offering for sale and selling their various products as herein described in commerce herein are false and misleading and 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 an antiseptic or prophylactic or heal the delicate membranes or tissues of the vaginal tract; and are not competent and effective treat-

ments for sub-normal or unhealthful conditions of the uterus or vagina, nervousness, pain or discomfort, and mental depression.

PAR. 6. 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. 7. 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 diverted unfairly 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. 8. The aforementioned methods, acts, and practices of 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 the Federal Trade Commission 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 12, 1938, issued and thereafter served its complaint in this proceeding upon the respondent, Rosemarie Lewis, an individual, trading as the Certane Co. and Certane Co., Inc., a corporation, charging them 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 the answer of the respondent, Rosemarie Lewis, an individual, trading as Certane Co., thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin and DeWitt T. Puckett, attorneys for the Commission, and in opposition to the allegations of the complaint by Daniel Dougherty, attorney for the

respondent, before C. P. Vicini, an examiner of the Commission theretofore duly designated by it. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, the report of the trial examiner upon the 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, Rosemarie Lewis, is an individual trading as "Certane Company," with her principal office and place of business located at 1212 West Washington Boulevard, Los Angeles, Calif. She is now, and for more than 8 years has been engaged in the manufacture, sale, and distribution in commerce of certain medicinal feminine hygiene preparation and appliances known respectively as Certane Ointment, Certane Jelly, Certane Antiseptic Powder, Certane Douche Powder, and Certane Cones designed for so-called feminine-hygiene use and for use in preventing conception, pregnancy, and diseases common to the female anatomy. Respondent is also engaged in the sale of certain syringes, applicators, "Douches," "douche shields," "Dia-Caps," and "Dia-Domes" for use in applying said medicinal preparations. Respondent sells and distributes her products both to dealers and to consumers.

The Certane Co., Inc., also named as a respondent herein, was incorporated in 1933, as a California corporation, with its principal place of business also located at 1212 Washington Boulevard, Los Angeles, Calif. Respondent, Rosemarie Lewis, was the sole stockholder of said corporation until its dissolution on July 9, 1937. Prior to the dissolution of the said corporation, respondent, Rosemarie Lewis, traded under the name of Certane Co., Inc., manufacturing and selling feminine hygiene products, and, subsequent to such dissolution, respondent, Rosemarie Lewis, has continued such business under the trade name of Certane Co.

PAR. 2. In the course and conduct of her business respondent, Rosemarie Lewis, causes and has caused her said products, when sold, to be transported from her place of business in the State of California, to purchasers thereof located in various other States of the United States.

Respondent maintains, and for more than 8 years last past has maintained, a course of trade in her said medicinal preparations and feminine-hygiene appliances in commerce between and among the various States of the United States.

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

PAR. 4. In the course and conduct of her business and for the purpose of inducing the purchase of her said products, the respondent, Rosemarie Lewis, is disseminating and has disseminated advertisements among prospective purchasers, by United States mail, by insertion in newspapers and magazines; and by distribution of booklets, pamphlets, and other advertising literature. Among and typical of the statements and representations made by her in advertising booklets are the following:

WOMEN'S SECRETS
A confidential
Discussion of
FEMININE
HYGIENE
by
Rose Marie Lewis

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

Through my investigation, I found that Certane, a product of years of research by laboratory specialists, was the one Feminine Hygiene highly recommended by many physicians and nurses, and also by thousands of women who have used it with such satisfying results.

Certain assures you of a method that is safe and dependable in quality, easy to use and economical to purchase. * * *

Your own physician can approve the use of every ingredient combined in the Certane Method of Feminine Hygiene.

* * * * * * *

Suppressed or Delayed Menstruation

Any abnormal or diseased condition should be treated by a reliable physician. Where the delayed menstruation is the result of exposure to cold or similar indiscretions, the effect of a warm, medicated douche is an aid to nature in relieving the congestion.

The most beneficial results are obtained by use of the "ballooning" douche, with the water at a temperature, according to physicians, of 120 to 125 degrees F. The solution, to which Certane Douche Powder should be added, must be retained for more than 15 minutes to half an hour. Full ballooning of the vaginal walls is imperative, as only in this way can the many folds and linings be reached by the douche. Use this treatment twice a day, a day or so before the customary flow period, continuing until relief from the congestion is obtained.

* * * * * * *

Certane Jelly, because of its proper consistence, clings to the tissues and readily spreads into the many folds and crevices of the vaginal tract, forming a film over the mucous membrane, and remaining for hours in effective contact.

You can depend on this product as being safe to use. Its action, persisting for hours, makes its usefulness obvious to every woman.

WHAT MODERN CLINICS ARE USING

As an accommodation to those who desire added precaution, Certane offers the uterine medicator, either the Dia-Cap or Dia-Dome, separately illustrated and described, as a scientific and convenient method of holding medication in contact with the cervix or mouth of the womb. This method is endorsed by medical science and is today the foremost method used in hygiene clinics. * * * * * * Once properly inserted, and after a short time in use, the wearing of Certane Dia-Cap or Dia-Dome is unnoticed. There is not the slightest feeling of discomfort and it offers no obstacle to the normal functioning of the vaginal canal.

Nor is there any risk connected with the use of either the Certane Dia-Cap or Dia-Dome. It cannot be "lost" in the vaginal tract and is easily removed.

CERTANE DIA-CAP * * * *needs no fitting*

New and entirely revolutionary in design, made to fit all normal women, Certane Dia-Cap is especially favored by physicians.

It fits over the mouth of the cervix and lodges itself into the folds of the vaginal canal, completely blocking off the cervix, where it is held firmly in place by suction. When properly inserted there is no sensation of discomfort. The one size fits all normal women. Made exclusively by Certane Co., Inc.

* * * * * * *

Certane Antiseptic Powder is applied dry and sprayed into the vaginal tract. It is a recognized antiseptic compound, which easily dissolves in the natural secretions of the vaginal tract. It penetrates and bathes both the tissues and delicate membranes and its action remains in effective contact for as many hours as it is retained in the vaginal tract. It is most active five to ten minutes after application, which allows time for dissolving.

The inclusion of this antiseptic in Certane assures you of a method of feminine hygiene that is safe from harmful poisons, dependable in quality, easy to use and economical to purchase.

Thousands of women have used Certane exclusively for years. to the exclusion of other products for which the manufacturers have claimed "just as good" qualities. We have in our files hundreds of unsolicited testimonials from women everywhere who have used it with such splendid results.

Certane has been laboratory tested by professional chemists and their reports establish its merited reputation (copy of laboratory report furnished any physician upon request).

But better than any laboratory test is the unanimous praise of those women who have used it with such gratifying satisfaction. It is recognized, both theoretically and practically, as one type method of feminine hygiene that meets the test of the most exacting use. This is because, in addition to the splendid reliable quality of its antiseptic ingredients, there is also the smooth, soothing texture of the jelly carrier itself. It melts at low temperature so that it quickly spreads at body heat. There is no tell-tale odor to linger and embarass. Many physicians who have observed its excellent performance under actual application, recommend Certane exclusively to their patients.

PAR. 5. Through the use of the foregoing statements and representations and others of similar import, the respondent represents and has represented that her various preparations and appliances if used as directed by her and as illustrated in the various diagrams pictured in her advertising booklets and other literature, are safe, competent, and effective preventatives against conception and will prevent pregnancy; that her preparations if used as directed will correct suppressed or delayed menstruation; that said products are composed in whole or in part of ingredients which are 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; that the use of said products prevents disease, causes the rapid elimination of bacteria, including leucorrhea and disagreeable discharges and acts as a preventive of female irregularities; that said products are antiseptic and effective as prophylactics; that they heal the delicate membranes and tissues of the vaginal tract and form competent and effective treatments for the subnormal or unhealthy conditions of the uterus or vagina, nervousness, pain, discomfort, and mental depression.

PAR. 6. The Commission finds that respondent's Antiseptic Jelly and Antiseptic Powder are composed principally of boric acid, quinine bisulphate, and oxyquinoline sulphate as the chief medicants; the powder in addition contains citric acid; the Medicated Cones contain boric acid, oxyquinoline sulphate, and zinc sulphate; and respondent's Douche Powder contains boric acid, sodium chloride, and oxyquinoline sulphate; that all products sold by respondent are now prefaced by the name "Certane"; that all of the products with the exception of the Cones are applied by the use of special devices known as applicators, douche shields, syringes, atomizers, Dia-Caps and Dia-Domes.

The respondent's "Antiseptic Jelly" is inserted into the vaginal tract by the use of an instrument called an applicator which consists of a tube fitted with a plunger, and respondent directs that user fill the tube with jelly and force same into the vaginal cavity by use of the plunger, and represents that said product used as directed can be

depended upon as a safe preventative of conception or pregnancy and will cure various diseases of the vaginal tract.

Respondent's "Antiseptic Powder" is used by blowing the powder into the vaginal tract by use of a rubber bulb, a small rubber tube, and a glass tube. Respondent claims that the powder will in due course be dissolved and spread throughout the vaginal tract and effect a safe and harmless treatment for diseases of the vaginal tract and will prevent conception or pregnancy. Respondent's "Douche Powder" is used by dissolving said powder in water and thereafter ballooned into the vaginal tract by the use of respondent's fountain syringe equipped with her douche shield, and is recommended by the respondent as a safe and most sanitary method of treating various vaginal diseases and as a preventative of conception or pregnancy.

The "Dia-Caps" and "Dia-Domes" are recommended by the respondent for use as scientific and convenient methods of preventing conception and for treatment of vaginal diseases or disorders, by inserting as a cap over the cervix or mouth of the womb after having been covered with respondent's Antiseptic Jelly, and respondent claims that the absorption of same into the womb and other parts will give satisfactory results and that women can use same with little or no inconvenience. The Dia-Caps are sold by the respondent in only one size and respondent states in her advertising literature that they will fit any normal woman. The Dia-Domes are sold in various sizes for use in the same manner.

PAR. 7. The Commission finds that respondent's preparations while they may to some extent destroy spermatozoa with which they come in direct contact, are not competent or effective preventatives against conception and will not prevent pregnancy. The use of said preparations will not correct suppressed or delayed menstruation or prevent female irregularities. Said products have no therapeutic value in the treatment of subnormal or unhealthful conditions of the uterus or vagina, nervousness, pain, discomfort, or mental depression. The use of said products will not prevent disease, cause the rapid elimination of bacteria, including leucorrhea and disagreeable discharges, or heal the delicate membranes and tissues of the vaginal tract. The use of respondent's preparations and appliances will not be effective in insuring health but instead their use as directed by the respondent may be detrimental to health and this is particularly true in the use of respondent's Douche Powder with Douche Bag equipped with respondent's Shield, by which process respondent provides for ballooning the vaginal cavity with the possibility of causing sufficient pressure to force fluid into the womb and Fallopian tubes which might cause

salpingitis, and if infection of any kind is present in the vaginal cavity, it is possible for the ballooning operation to carry or force said infection into the Fallopian tubes and peritonitis might result.

The Commission finds that the use of respondent's Dia-Caps or Dia-Domes, commonly known in the medical profession and among the laity as diaphragms, is not a guarantee against conception or pregnancy. The Dia-Caps are sold in one size only and are guaranteed to fit any normal woman. The Dia-Domes are the same as the Dia-Caps, except made slightly different in shape, and are sold in various sizes. They will not fit all normal women. These appliances should be properly fitted to the particular woman who is to use them, preferably by a physician or other competent person. It is impossible for a woman to classify herself in a group and determine what size Dia-Cap or Dia-Dome meets her requirements. Without special instructions and fitting these appliances would afford little or no protection.

PAR. 8. The Commission finds that the use by the respondent of the foregoing false, deceptive, and misleading statements and representations has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's preparations and appliances and thereby trade has been diverted unfairly to the respondent from her competitors 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 within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence in support of the allegations of said complaint and in opposition thereto taken before C. P. Vicini, an examiner of the Commission theretofore duly designated by it, the report of the trial examiner upon the evidence, and upon briefs filed herein by William L. Taggart, counsel for the Commission, and

Daniel Dougherty, counsel for the respondent (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Rosemarie Lewis, individually, and trading as Certane Co., or trading under any other name, her representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of feminine hygiene preparations known as "Certane Ointment," "Certane Jelly," "Certane Antiseptic Powder," "Certane Douche Powder," and "Certane Cones," and various appliances known as "Douche Shields," "Applicators," "Dia-Caps," and "Dia-Domes," or any other preparations or appliances having substantially similar composition, or substantially similar properties or function, whether sold under the same names or under any other names, do forthwith cease and desist from representing directly or indirectly:

1. That any of said preparations or appliances whether used alone or in conjunction with any other of said preparations or appliances, will prevent conception or prevent pregnancy, or that said preparations or appliances are safe, competent or effective preventatives against conception.

2. 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 that such use will prevent female irregularities in menstruation or will correct suppressed menstruation.

3. That any of said preparations or appliances have any therapeutic value in the treatment of subnormal or unhealthful conditions of the uterus or vagina, nervousness, pain, discomfort, or mental depression.

4. That the use of any of respondent's preparations or appliances, whether used alone or in connection with any other of said preparations or appliances, will prevent disease, cause the rapid elimination of bacteria, including leucorrhea and disagreeable discharges, or will heal the delicate membranes and tissues of the vaginal tract.

5. That the use of respondent's preparations or appliances, whether used alone or in connection with any other of said preparations or appliances, will be effective in insuring health.

6. That respondent's appliance known as "Douche Shield" may be used as directed by the respondent in ballooning the vaginal cavity without possible harmful effects.

It is further ordered, That the case herein be, and the same hereby is, closed as to Certane Co., Inc., a defunct corporation.

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

IN THE MATTER OF

CHICAGO THERMO-MAGNETIC CUSHION COMPANY, AND A. MERCER PARKER

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

Docket 3523. Complaint, Aug. 2, 1938—Decision, Mar. 19, 1941

Where a corporation and an individual, who was its president, owned 98 percent of its stock, and managed, controlled, and directed its sales policies and business affairs, engaged in the manufacture and competitive interstate sale and distribution of their "Thermo-Magnetic Cushion," upon which, after plugging it into an ordinary house socket, patient was to sit for treatment through the pelvic region, in advertising and describing their said device in various magazines and newspapers of interstate circulation and in circulars, folders, and occasionally personal letters sent to those replying to aforesaid advertising—

Represented that their said "Thermo-Magnetic Cushion" possessed remedial and therapeutic value in treatment of constipation, colds, rheumatism, lumbago, sciatica, menstrual disorders of women, neurasthenia, neuritic troubles, nervous ailments, stomach and digestive troubles, including constipation, prostatic troubles, kidney or bladder trouble, nervous ailments, and other ailments of the human body, and that the use of said device would promote good blood circulation, dissipate congestion, and revitalize the human system;

Facts being infrared rays emitted by it were weak, with comparatively slight penetrating qualities, and its electromagnetic effect was very weak, with no effect upon body tissue, properties thereof were limited to those of an ordinary heating pad, local application of which may in some cases give temporary relief from pain, effective area of application in treatment of painful conditions was restricted by the method of use, and device did not constitute a cure or remedy for various ailments and conditions above set forth, and had no therapeutic value in the treatment thereof in excess of affording temporary relief from pain when localized in the area affected by said device, and use thereof would not revitalize the system;

With effect of misleading and deceiving a substantial portion of the purchasing public and of causing it mistakenly and erroneously to believe that their said representations and implications were true, and to purchase substantial quantities of their said device because of said mistaken and erroneous belief and with consequence that trade in commerce had been and was diverted unfairly to them from competitors who truthfully represented their said 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.

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

Mr. DeWitt T. Puckett and *Mr. J. R. Phillips, Jr.*, for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Chicago Thermo-Magnetic Cushion Co., a corporation, and A. Mercer Parker, individually, and as an officer 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, Chicago Thermo-Magnetic Cushion Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its offices and principal place of business located at 36 West Randolph Street in the city of Chicago, State of Illinois. Respondent, A. Mercer Parker, whose address is 36 West Randolph Street in the city of Chicago, State of Illinois, is an officer of the aforesaid respondent corporation and manages, controls, and directs the sales policies and business affairs of said respondent corporation, and participated in the acts and practices herein charged. Said respondents are engaged in the manufacture, sale, and distribution of a certain device designated by respondents as a "Thermo-Magnetic Cushion," whereby, by means of alternating electric current, a thermomagnetic field of therapeutic value is said by respondents to be created, to the great benefit of customers of respondents using said "Thermo-Magnetic Cushion."

Respondents caused and cause their product, when sold, to be transported from their place of business in Chicago, in the State of Illinois, to the purchasers thereof, located in the States of the United States other than the State of Illinois and in the District of Columbia.

Respondents now maintain, and for more than 7 months last past have maintained, a course of trade in the aforesaid device so manufactured, distributed, and sold by them 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 aforesaid, the respondents are, and for more than 7 months last past have been, in competition with corporations, individuals, and partnerships engaged in the sale and distribution of heating pads, heating cushions, and other electrical devices and appliances, and in the sale and dis-

tribution of products used and useful in the treatment of the ailments, diseases, and conditions for which respondents recommend their said device, in commerce between and among the various States of the United States and in the District of Columbia.

Among the competitors of respondents are many individuals, firms, and corporations who sell and distribute in said commerce heating pads, heating cushions, and other electrical devices and appliances, and various and sundry products used and useful in the treatment of many of the ailments, diseases, and conditions mentioned in advertising matter used by the respondents, as set out in paragraph 3 hereof, who do not misrepresent the therapeutic value of their said products.

PAR. 3. In the course of their aforesaid business, and for the purpose of inducing the purchase of their device by members of the purchasing public, respondents published and circulated and caused to be published and circulated among prospective purchasers in the various States of the United States and in the District of Columbia, advertisements in magazines, newspapers, and letters, bulletins, pamphlets, circulars, and by other means designed and intended to influence the purchase of their devices.

Appearing in the advertisements and descriptive literature, as aforesaid, among others, are the following statements:

PAIN Soothed and Relieved

By Remarkable New
THERMO-MAGNETIC CUSHION

STOP THE CRY of those irritated nerves responsible for the pains of menstruation, of enlarged prostate, kidney and bladder troubles, lumbago, sciatica, etc. New and simple method applies deep soothing heat to the organs of the pelvis and abdomen. Write today.

CHICAGO THERMO-MAGNETIC CUSHION COMPANY
36 W. Randolph Street, Dept. C. Chicago, Ill.

By applying infra-red rays, magnetism and vibrations through the pelvic regions, MAN IS BEING TREATED THROUGH THE ROOTS OF HIS BODY, thereby reaching the seat of his trouble.

This is what the cushion does for you * * * IT PROMOTES GOOD BLOOD CIRCULATION, purifying the blood streams and nerve cells, thereby aiding nature to keep you healthy.

Deep penetrating Infra-Red Rays and Electro Magnetism are applied to the PELVIC ORGANS, bringing remarkable relief through an increase of circulation of blood and nerve energy.

The penetrating rays increase circulation, dissipate congestions, relax overtensions, thus bring relief.

GENERAL TREATMENT

A treatment can be taken any time without any preparation or disrobing. FOR REVITALIZING, two or three one-half hour treatments a day are sufficient. A period of longer duration is not advisable.

STOMACH and DIGESTIVE TROUBLE. This treatment taken before or at meal time will aid digestion.

CONSTIPATION, it is said, is the direct cause of about 95% of our physical troubles. The THERMO-MAGNETIC CUSHION increases the circulation to such an extent that the peristaltic action of the bowels is so strengthened that evacuation is considerably improved. One must be careful regarding what one eats to get best results and lasting relief from constipation.

RHEUMATISM, LUMBAGO, SCIATICA and NEURITIC CONDITIONS. Application of one hour is advised.

PROSTATE TROUBLE. The THERMO-MAGNETIC CUSHION is a specific for this distressing ailment.

MENSTRUAL DISORDERS OF WOMEN. Relief is at times almost immediate, but to normalize extended applications are required. It is an invaluable aid during the menopause.

NEURASTHENIA. The cushion will alleviate this condition. Extended and periodic application is required to obtain maximum benefit.

COLDS. This treatment gives quick relief providing stimulation of circulation and greater tissue resistance.

The Cushion can be used for local application to back, abdomen and chest. It has been found very beneficial in cases of insomnia, in drawing the blood congestion from local areas and in speeding up the general circulation.

But, concealed inside, near the top, are two specially constructed Electro-Magnetic Coils. They are so placed as to send Thermo-Magnetic Heat Rays through the Perineum or the soft part between the thighs to the Pelvic Organs.

However, the beneficent effects of these heat waves and of the improved circulation go far beyond these immediate organs.

For Relief of Menstrual Pains.

The entire pelvic region is flooded with Thermo-Magnetic rays which stimulate circulation, relieve congestion and quickly bring relief from the pain distress, as well as excess muscle tension.

Relief of Prostatic Trouble.

By applying Thermo-Magnetic Rays directly to the perineum, this potent, natural force at once begins the work of reducing the congestion and relaxing excess muscle tension. As the swelling is reduced the necessity for frequent bladder evacuations at night is avoided, and irritation and dragging down sensations should quickly disappear.

Those Agonizing Rheumatic Pains.

And now with the penetrating Thermo-Magnetic Rays of the Chicago Thermo-Magnetic Cushion, millions who are afflicted can obtain quick and lasting relief.

This Thermo-Magnetic Cushion soothes the irritated nerves. It stimulates circulation. It breaks up congestions and relaxes muscle tensions. It aids nature in dispelling the accumulations of poisons in the muscles and joints so they can be eliminated from the system.

If you suffer from rheumatic aches and pains, send for this Thermo-Magnetic Cushion and learn for yourself the relief and comfort it will enable you to enjoy.

For Nervous Ailments.

A person can hardly take even a single treatment with this cushion without feeling some of the relaxing, soothing effect of the Thermo-Magnetic Rays applied to the perineum and pelvic region.

And under the soothing, yet stimulating, influence of regular Thermo-Magnetic treatments, one's whole mental attitude undergoes a beneficial change. Life assumes a more cheerful, pleasanter aspect. Happiness and sunshine tend to drive out despair and gloom.

There is hardly a person living who could not benefit through the occasional or regular use of this Thermo-Magnetic Cushion—for better mental and physical health.

Respondents have also published certain alleged testimonials from users in their literature, it being represented that the original letters with full names and addresses were on file at their office.

PAR. 4. By the means and in the manner aforesaid, respondents represent and imply that said device, "Thermo-Magnetic Cushion," is of remedial and therapeutic value in the treatment of, and will cure, the ailments, diseases, and conditions mentioned in said advertising matter and set out in paragraph 3 hereof.

The use of said device will not cure all or any of the ailments, diseases, and conditions mentioned, and it is of no remedial or therapeutic value in the treatment of constipation, colds, rheumatism, lumbago, sciatica, menstrual disorders of women, neurasthenia, neuritic conditions; stomach, digestive, and prostate troubles; or any other ailment, disease, or condition, except as a device for the application of heat to a local area, which may, or may not, result in a temporary alleviation of pain, dependent upon the systemic or underlying disorder producing the pain. The use of said device will not, in any sense, revitalize the human system.

Respondents do not possess original testimonial letters with full names and addresses of the writers on file as represented in their said advertising literature.

PAR. 5. Respondents' acts and practices, as hereinabove alleged, have had, and do have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public, and have caused and do cause a number of members of the purchasing public mistakenly and erroneously to believe that said representations and implications are true, and that the use of respondents' said device will cure said ailments, diseases, and conditions and, because of said mistaken and erroneous belief, to purchase respondents' said device. As a result thereof, trade in said commerce has been, and is, diverted unfairly to the respondents from their competitors to the injury of said competitors and to the injury of the public.

PAR. 6. The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission 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, 1938, issued and thereafter served its complaint in this proceeding upon respondents, Chicago Thermo-Magnetic Cushion Co., a corporation, and A. Mercer Parker, individually, and as an officer of said corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of 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, before W. W. Sheppard, 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 in support of the complaint, 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, Chicago Thermo-Magnetic Cushion Co., is a corporation organized, existing, and doing business under the laws of the State of Illinois with its office and principal place of business located at 36 West Randolph Street, in the city of Chicago, State of Illinois. Respondent, A. Mercer Parker, whose address is 36 West Randolph Street, Chicago, Ill., is President of the respondent corporation and manages, controls, and directs its sales policies and business affairs. Said respondents are engaged in the manufacture, sale, and distribution to purchasers throughout the United States of a certain device designated as a "Thermo-Magnetic Cushion," and respondents cause said device when so sold to be transported from their place of business in Chicago, Ill., to the purchasers thereof located in States of

the United States other than the State of Illinois, and in the District of Columbia. Respondents now maintain, and for more than 7 months prior to the issuance of the complaint herein have maintained, a course of trade in the aforesaid device so manufactured, distributed, and sold by said respondents 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 for more than 7 months prior to the issuance of the said complaint herein had been, in competition with other corporations, individuals, and partnerships likewise engaged in the manufacture, sale, and distribution of heating pads, heating cushions, and other electrical devices and appliances, and in the sale and distribution of products used, and useful, in the treatment of ailments, diseases, and conditions for which respondents recommend their said device, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, A. Mercer Parker, is president of the respondent corporation and the owner of 98 percent of the stock therein. Ruby E. Morgan is secretary of respondent corporation and the owner of one share of stock therein. Mrs. Juanita Conlin is treasurer of respondent corporation and the owner of one share of stock therein. Dr. A. Mercer Parker is not an M.D., but is a chiropractor. Respondent, A. Mercer Parker, prior to December 1, 1936, took over the business of another firm, "The Holder's Health Aids," which at that time was engaged in manufacturing a device which respondent continued to manufacture with certain changes. The "Chicago Thermo-Magnetic Cushion" is described as an assembly of rubber fillers enclosed in a canvas pad, and covered with a leather covering. It is electrically wired and when used is plugged into an ordinary house socket. There is a thermostat control on the device. The device, when in use, is placed on a chair, and the patients sits on it. The patient plugs the socket into the wall for the purpose of obtaining electric current, and treatment is had through the pelvic region. The patient is instructed to sit on the device for 30 minutes, more or less. The device retailed for $9.75, but later the price was raised to $16.50.

PAR. 3. Respondents' method of doing business was to insert advertising in various magazines and newspapers published and circulated throughout the various States of the United States and in the District of Columbia. Respondents would receive letters of inquiry from various members of the purchasing public in response to such advertising, and in answer to these inquiries respondents would mail to those so inquiring circulars and folders descriptive of respondents' device, and sometimes would write personal letters. At other times form letters

were sent out. Among and typical of the representations appearing in magazine advertising of general circulation are the following statements:

PAIN Soothed and Relieved

By Remarkable New THERMO-MAGNETIC CUSHION

STOP THE CRY of those irritated nerves responsible for the pains of menstruation, of enlarged prostate, kidney and bladder troubles, lumbago, sciatica, etc. New and simple method applies deep soothing heat to the organs of the pelvis and abdomen. Write today.

Typical of the advertising statements appearing in folders and circulars distributed by mail throughout the various States of the United States are the following:

By applying infra-red rays, magnetism and vibrations through the pelvic regions, MAN IS BEING TREATED THROUGH THE ROOTS OF HIS BODY, thereby reaching the seat of his trouble.

This is what the cushion does for you * * * IT PROMOTES GOOD BLOOD CIRCULATION, purifying the blood streams and nerve cells, thereby aiding nature to keep you healthy.

Deep penetrating Infra-Red Rays and Electro Magnetism are applied to the PELVIC ORGANS, bringing remarkable relief through an increase of circulation of blood and nerve energy.

* * * * * * *

The penetrating rays increase circulation, dissipate congestions, relax overtensions, thus bring relief.

GENERAL TREATMENT

A treatment can be taken any time without any preparation or disrobing. FOR REVITALIZING, two or three one-half hour treatments a day are sufficient. A period of longer duration is not advisable.

STOMACH AND DIGESTIVE TROUBLE. This treatment taken before or at meal time will aid digestion.

CONSTIPATION, it is said, is the direct cause of about 95% of our physical troubles. The THERMO-MAGNETIC CUSHION increases the circulation to such an extent that the peristaltic action of the bowels is so strengthened that evacuation is considerably improved. One must be careful regarding what one eats to get best results and lasting relief from constipation.

RHEUMATISM, LUMBAGO, SCIATICA AND NEURITIC CONDITIONS. Application of one hour is advised.

PROSTATE TROUBLE. The THERMO-MAGNETIC CUSHION is a specific for this distressing ailment.

MENSTRUAL DISORDERS OF WOMEN. Relief is at times almost immediate, but to normalize extended applications are required. It is an invaluable aid during the monopause.

COLDS. This treatment gives quick relief providing stimulation of circulation and greater tissue resistance.

The Cushion can be used for local application to back, abdomen and chest. It has been found very beneficial in cases of insomnia, in drawing the blood con-

gestion from local areas and in speeding up the general circulation.

* * * * * * *

But, concealed inside, near the top, are two specially constructed Electro-Magnetic Coils. They are so placed as to send Thermo-Magnetic Heat Rays through the perineum or the soft part between the thighs to the Pelvic Organs.

* * * * * * *

For Relief of Menstrual Pains

* * * * * * *

The entire pelvic region is flooded with Thermo-Magnetic rays which stimulate circulation, relieve congestion and quickly brings relief from the pain distress, as well as excess muscle tension.

Relief of Prostatic Trouble

* * * * * * *

By applying Thermo-Magnetic Rays Directly to the perineum, this potent, natural force at once begins the work of reducing the congestion and relaxing excess muscle tension. As the swelling is reduced the necessity for frequent bladder evacuations at night is avoided, and irritation and dragging down sensations should quickly disappear.

Those Agonizing Rheumatic Pains

* * * * * * *

And now with the penetrating Thermo-Magnetic Rays of the Chicago Thermo-Magnetic Cushion, millions who are afflicted can obtain quick and lasting relief.

* * * * * * *

This Thermo-Magnetic Cushion soothes the irritated nerves. It stimulates circulation. It breaks up congestions and relaxes muscle tensions. It aids nature in dispelling the accumulations of poisons in the muscles and joints so they can be eliminated from the system.

If you suffer from rheumatic aches and pains, send for this Thermo-Magnetic Cushion and learn for yourself the relief and comfort it will enable you to enjoy.

For Nervous Ailments

* * * * * * *

A person can hardly take even a single treatment with this cushion without feeling some of the relaxing, soothing effect of the Thermo-Magnetic Rays applied to the perineum and pelvic region.

And under the soothing, yet stimulating, influence of regular Thermo-Magnetic treatments, one's whole mental attitude undergoes a beneficial change. Life assumes a more cheerful, pleasanter aspect. Happiness and sunshine tend to drive out despair and gloom.

There is hardly a person living who could not benefit through the occasional or regular use of this Thermo-Magnetic Cushion—for better mental and physical health.

PAR. 4. Through the use of the foregoing statements and others similar thereto but not herein set out, all of which purport to be descriptive of respondents' product, "Thermo-Magnetic Cushion," respondents represent that said device possesses remedial and therapeutic value in the treatment of constipation, colds, rheumatism, lumbago, sciatica, menstrual disorders of women, neurasthenia, neuritic con-

ditions, nervous ailments, stomach and digestive troubles, including constipation, prostatic troubles, kidney or bladder trouble, nervous ailments and other ailments of the human body, and that the use of said device will promote good blood circulation, dissipate congestion, and will in fact revitalize the human system.

PAR. 5. The Commission finds that respondents' said advertising representations concerning their said product, "Thermo-Magnetic Cushion," are false, misleading, and exaggerated in the following among other particulars: The infra-red rays emitted by respondents' device are weak with comparatively slight penetrating qualities. The electro-magnetic effect of this device is very weak and has no effect upon the body tissue. The properties of this device are limited to those of an ordinary heating pad. The local application of a heating pad may in some cases give temporary relief to pain under conditions where the application of heat would be indicated. However, the method of use of respondents' device as a cushion upon which the patient is seated restricts the effective area of application of this device in the treatment of painful conditions. The use of this device does not constitute a cure or remedy for constipation, colds, rheumatism, lumbago, sciatica, menstrual disorders of women, neurasthenia, neuritic conditions, nervous ailments, stomach and digestive troubles, including constipation, prostatic troubles, kidney or bladder trouble, nervous ailments and other ailments of the human body, and said device has no therapeutic value in the treatment of such conditions in excess of affording temporary relief from menstrual pain and pain from rheumatism, lumbago, sciatica, and neuritic conditions when localized in the area affected by this device. The use of said device will not revitalize the human system.

PAR. 6. The aforesaid false and misleading representations of respondents have had, and now have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public and have caused and do cause a number of members of the purchasing public mistakenly and erroneously to believe that said representations and implications are true, and because of said mistaken and erroneous belief, so induced, to purchase substantial quantities of respondents' said device. As a result thereof, trade in said commerce has been, and is, diverted unfairly to the respondents from competitors who truthfully represent their said products.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice of the public, and of respondents' competitors,

and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and other evidence in support of the complaint taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, brief filed in support of the complaint (respondents not having filed brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Chicago Thermo-Magnetic Cushion Co., a corporation, and its officers, and A. Mercer Parker, individually and as an officer of Chicago Thermo-Magnetic Cushion Co., 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 the device designated as "Thermo-Magnetic Cushion" or any other device of substantially similar construction or possessing substantially similar properties or functions, whether sold under such name or any other name, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the use of said device, "Thermo-Magnetic Cushion," constitutes a cure or remedy for constipation, colds, rheumatism, lumbago, sciatica, menstrual disorders of women, neurasthenia, neuritic conditions, nervous ailments, stomach and digestive disorders, prostatic disorder, kidney or bladder disorders, nervous ailments or other ailments of the human body, or that said device has any therapeutic value in the treatment of such conditions in excess of affording temporary relief from menstrual pain or pain associated with rheumatism, lumbago, sciatica, and neuritic conditions when localized in an area affected by heat from said device.

2. Representing that the use of respondents' device will revitalize the human system.

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

JULIAN S. COHN

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

Docket 4106. Complaint, Apr. 25, 1940—Decision, Mar. 19, 1941

Where an individual engaged in interstate sale and distribution of handkerchiefs—

Represented, orally and by correspondence and otherwise, that he was the manufacturer of said products, facts being it was his practice to have raw materials secured by him, in designs and patterns desired, from yardage mills, made up by various concerns under contract with him in accordance with specifications which he submitted and which included such matters as sizes, widths, and lengths desired, and character and manner of stitching, etc., and plants in which his said products were thus made were owned, operated, and controlled by the various owners and not by him, and he was in no sense such a manufacturer, from whom a substantial portion of purchasing public prefers to purchase direct as affording in its belief, savings of middleman's or wholesaler's profit;

With effect of misleading and deceiving purchasers of such products, and of causing them mistakenly and erroneously to believe that he was a manufacturer of handkerchiefs, and, as result of such belief, to purchase 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. Randolph Preston*, trial examiner.

Mr. Wm. T. Chantland for the Commission.

Mr. Nathaniel Phillips and *Mr. S. S. Goldsmith*, 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 Julian S. Cohn, an individual, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Julian S. Cohn, with his office and principal place of business at 260 Fourth Avenue, New York, N. Y., is now and for more than 2 years last past has been engaged in the sale and distribution of handkerchiefs.

In the course and conduct of his said business, respondent has caused his product when sold to be transported from his place of business in the State of New York to the purchasers thereof located in the various States of the United States and 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, and for the purpose of inducing the purchase of his said product, respondent has represented that he is a "manufacturer of handkerchiefs." The term "manufacturer of handkerchiefs" is used by respondent on the business stationery used by him in the course and conduct of his business in the solicitation of orders for his said product. The use of the term "manufacturer of handkerchiefs" or the use of the word "manufacturer" is a representation that respondent owns, operates, or controls a factory or mill wherein the product which he offers for sale and sells is made or manufactured.

PAR. 3. The aforesaid representation is false, deceptive, and misleading. In truth and in fact, respondent does not now make or manufacture, nor has he ever made or manufactured, said products, but buys the goods from which said handkerchiefs are made, has them made elsewhere under contracts, and fills orders for handkerchiefs received by him with products thus made and not made or manufactured in any mill or factory owned, operated, or controlled by respondent.

PAR. 4. There is a preference on the part of certain purchasers and prospective purchasers located in the various States of the United States and in the District of Columbia for buying said products and like or similar products directly from the manufacturer or mill producing the same. There is an impression and belief existing among certain of said purchasers or prospective purchasers of said products that a saving of the middleman's profit may be obtained, that a more uniform line of goods may be purchased, and that other advantages may be obtained by purchasing goods directly from a manufacturer or mill operator.

The use by the respondent of the word "manufacturer" and the phrase "manufacturer of handkerchiefs" as hereinabove alleged has the tendency and capacity to mislead and deceive, and has misled and deceived, purchasers of said products by causing them mistakenly and erroneously to believe that respondent actually owns, operates, or directly and absolutely controls a mill or factory in which his said handkerchiefs are made or manufactured and the tendency and capacity

to, and does, cause a substantial portion of the purchasing public to purchase respondent's said products on account of said mistaken and erroneous belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 25, 1940, issued its complaint in this proceeding and thereafter caused it to be served upon the respondent, Julian S. Cohn, 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 complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William T. Chantland, attorney for the Commission, and in opposition to the allegations of the complaint by Nathaniel Phillips and S. S. Goldsmith, attorneys for the respondent, before Randolph Preston, an examiner for the Commission theretofore duly designated by it; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, 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, Julian S. Cohn, is an individual with an office and place of business now located at 15 West Thirty-seventh Street, New York, N. Y. Respondent is now and for more than 2 years last past has been engaged in the sale and distribution of handkerchiefs.

PAR. 2. Respondent, in the course and conduct of his said business, has caused his said product, when sold, to be transported from his said place of business in the State of New York to purchasers thereof located in various States of the United States other than New York

and in the District of Columbia. Respondent maintains, and has at all times herein referred to maintained, a course of trade in said handkerchiefs in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of his said business and for the purpose of inducing the purchase of his product, has represented orally and by correspondence and otherwise that he was the manufacturer of the handkerchiefs offered for sale and sold by him in said commerce.

PAR. 4. Prior to July 1, 1940, it was the practice of respondent to secure from designers and artists the types of designs or patterns which he desired to have made into handkerchiefs. These designs or patterns were then submitted to yardage mills, and the necessary yardage materials were purchased from such mills to be made up into the quantities of handkerchiefs desired by respondent. After securing the raw yardage materials in the patterns or designs from which respondent desired his handkerchiefs to be made, he placed contracts with various concerns to make the handkerchiefs according to specifications submitted by him when placing his orders or entering into contracts with said mills. The specifications which respondent gave such manufacturers included specific instructions as to sizes, widths, and lengths desired, and the character and manner of stitching the edges thereof and as to how any embroidery or other decorative work was to be done thereon. After the handkerchiefs were thus made for respondent, they were delivered to him at his place of business for packing, sale, and distribution.

Prior to July 1, 1940, the manufacturing plants in which respondent's products were produced were owned, operated, and controlled by the various owners thereof, and not by the respondent, and the respondent was in no sense the manufacturer of the handkerchiefs offered for sale and sold by him. Prior to July 1, 1940, the only connection respondent had with the several manufacturing plants in which his handkerchiefs were manufactured, other than to contract with the operators of such factories to make handkerchiefs for him as above stated, was a minority stock interest in the United Handkerchief Co., a corporation, of Passaic, N. J., which manufactured, under a contract with the respondent, a substantial quantity of the handkerchiefs sold by the respondent. Through a contract effective July 1, 1940, after the issuance of the complaint in this proceeding, respondent exchanged his stock interest in said corporation for certain handkerchief-making machines operated by said corporation in its factory. According to the terms of said contract, respondent is to pay the

salaries, social security costs, and workmen's compensation insurance premiums of certain of the employees of said corporation whenever they operate the machines transferred to respondent in making handkerchiefs for the respondent. Said contract also provides that respondent is to pay a rental for the space occupied by said machines, and a salary to Benjamin Levine, an officer of and principal stockholder in said corporation, for superintending the operation of said machines when operated on respondent's handkerchiefs. At the time of the conclusion of hearings in this proceeding, no payment of rent to the corporation or of salary to Benjamin Levine had been made. The United Handkerchief Co., under the control and direction of Benjamin Levine and his wife, the principal stockholders in said corporation, has continued to control and operate the factory wherein the said machines are located.

PAR. 5. The use, prior to July 1, 1940, by respondent of the representation that he was the manufacturer of the handkerchiefs offered for sale and sold by him in said commerce was misleading and deceptive, for in truth and in fact respondent was not in any sense the manufacturer of such handkerchiefs.

PAR. 6. A substantial portion of the purchasing public has a preference for products purchased directly from the manufacturer or mill producing them, because it believes that by buying direct from the manufacturer a savings of middleman's or wholesaler's profit is effected.

PAR. 7. The use by respondent of the representation that respondent is a manufacturer of handkerchiefs, in connection with the offering for sale, sale, and distribution of his handkerchiefs, has the tendency and capacity to mislead and deceive, and has misled and deceived, purchasers of such products, and to cause, and has caused, such purchasers mistakenly and erroneously to believe that respondent was a manufacturer of handkerchiefs and, as a result of said mistaken and erroneous belief, to purchase respondent's said handkerchiefs.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, were 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 to

respondent, testimony and other evidence taken before Randolph W. 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 by William T. Chantland, counsel for the Commission, and by Nathaniel Phillips, 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, Julian S. Cohn, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of handkerchiefs in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "manufacturer" or the phrase "manufacturer of handkerchiefs," or any other word or phrase of similar import or meaning, to designate, describe, or refer to the business conducted by respondent, unless and until respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said products are made or manufactured by him.

2. Representing, directly or by implication, through the use of the word "manufacturer" or the phrase "manufacturer of handkerchiefs," or any other word or phrase of similar import or meaning, that respondent is the manufacturer of the products offered for sale and sold by him, unless and until said respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said products are made or 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

SCHRADE 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 4118. Complaint, Apr. 26, 1940—Decision, Mar. 19, 1941

Where a corporation engaged in manufacture and in interstate sale and distribution of various articles of cutlery—

Designated and marked as "Scout" and "SUPER SCOUT" pocket knives of certain general design and appearance, notwithstanding they were not those long made or distributed under supervision of the Boy Scouts of America, or approved, indorsed or sponsored by that organization and marked with words "Scout" or "Boy Scout," with or without other marks and insignia identifying them as standard Boy Scout equipment, and uniformly referred to as "Scout Knife";

With capacity and tendency to mislead and deceive purchasing public into belief that its said knives had been approved, indorsed or sponsored by the Boy Scouts of America and were a part of their standard equipment, for the purchase of which there is a marked preference on the part of a substantial portion of purchasing public over products which are not so sponsored or approved, and with effect of causing a substantial part of public to purchase its said knives because of such belief:

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

Mr. Joseph C. Fehr for the Commission.

Embler & Embler, of Walden, 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 Schrade 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, Schrade Cutlery Co., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located in the city of Walden, in the State of New York.

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, pocket knives designated and marked as "Scout" and "SUPER SCOUT" knives. Respondent causes its said products, when sold, to be transported 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. 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 knives manufactured and sold by respondent, as alleged and described in paragraph 2 hereof, have been and are of such general design and appearance as, when marked or labeled by

the use of the words "Scout," "Super Scout," or "Boy Scout," or any other marks or insignia characteristic of, or identifying them with, the Boy Scouts of America, would have, have had and have, the capacity and tendency to induce the purchasing public to believe that respondent's said knives have been and are approved, endorsed or sponsored by the Boy Scouts of America and are a part of the standard equipment of that organization; and to cause, and have caused, a substantial part of the public to purchase respondent's said knives because of such belief.

PAR. 5. In truth and in fact, respondent's said knives have not been and are not manufactured or distributed under the supervision of the Boy Scouts of America, have not been and are not approved, endorsed or sponsored by that organization, nor are they 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 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, 1940, issued and on April 20, 1940, served its complaint in this proceeding upon respondent, Schrade Cutlery 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, Schrade Cutlery Co., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located in the city of Walden, in the State of New York.

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, pocket knives designated and marked as "Scout" and "SUPER SCOUT" knives. Respondent causes its said products, when sold, to be transported 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. 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 in 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 knives manufactured and sold by respondent, as described in paragraph 2 hereof, have been and are of such general design and appearance as, when marked or labeled by the use of the words "Scout," "SUPER SCOUT," or "Boy Scout," or any other marks or insignia characteristic of, or identifying them with, The Boy Scouts of America, would have, have had and have, the capacity and tendency to induce the purchasing public to believe that respondent's said knives have been and are approved, endorsed or sponsored by The Boy Scouts of America and are a part of the standard equipment of that organization; and to cause, and have caused, a substantial part of the public to purchase respondent's said knives because of such belief.

PAR. 5. In truth and in fact, respondent's said knives have not been and are not manufactured or distributed under the supervision of The Boy Scouts of America, have not been and are not approved, endorsed, or sponsored by that organization, nor are they 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 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Schrade 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 its knives in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the words "SUPER 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

HARRY F. CROOK AND GRETCHEN CROOK, TRADING AS CROOK-WALLACE CO.

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

Docket 4176. Complaint, July 6, 1940—Decision, Mar. 19, 1941

Where 2 individuals engaged in competitive interstate sale and distribution of candy and confectionery products, including various assortments which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and which included, as typical, number of candy pieces of uniform size and shape, together with 4-section push card for use in sale and distribution of said candy to purchasing public under a plan, explained thereon, by which chance selection of certain numbers secured purchaser, for the cent paid, 2, 3, 5, 10, or 20 pieces of candy, as case might be, last sale in each of first 3 sections completed entitled him to 5 pieces, and maker of last punch on card received 15 pieces, all others receiving 1 piece only;

Sold said assortments, along with such 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 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 plan aforesaid, involving game of chance or sale of a chance to procure additional pieces 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 candy dealers who, unwilling to use said or any method involving game of chance or any other method contrary to public policy, refrain therefrom;

With result that use of said method by them, because of said game of chance, had a tendency and capacity to and did unfairly divert trade to them from their competitors:

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

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

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

Mr. Robert C. Kelley, of Vincennes, Ind., 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 Harry F. Crook and Gretchen Crook, individually and trading as Crook-Wallace 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Harry F. Crook and Gretchen Crook, are individuals trading as Crook-Wallace Co., with their office and principal place of business located at 415 North Second Street, Vincennes, Ind. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of candy and confectionery products to wholesale dealers, jobbers, and retail dealers. Respondents cause and have caused said products, when sold, to be transported from their principal place of business in the city of Vincennes, Ind., to purchasers thereof, at their respective points of location, in the various States of the United States other than Indiana and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by respondents in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are and have been in competition with other 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale dealers, jobbers, and retail dealers, certain assortments of candy so packed 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 a number of pieces of candy of uniform size and shape, together with the device commonly called a push card. The push card is divided into four sections and each of said sections contains 25 partially perforated disks on the face of which is printed the word "Push." Concealed within each of the said disks is a number which entitles the purchaser thereof to additional pieces of candy without additional cost when said number corresponds with any of the numbers set-out in the legend at the top

of said card. The numbers aforesaid are effectively concealed until a purchase has been made and the disk separated or removed from the card. The last disk pushed out of each of the first three sections completed entitles the purchaser thereof to additional pieces of candy without additional cost. The last disk pushed from said card also entitles the purchaser thereof to additional pieces of candy without additional cost. The sales are 1 cent each and those not securing a winning number receives 1 piece of said candy. The said card bears a legend or instructions as follows:

NO LOSERS

Number 5 Receives 20 Pieces of Candy

Numbers 10–15 Each Receive 10 Pieces of Candy

Numbers 20–25–30–35 Each Receive 5 Pieces of Candy

Numbers 40–45–50–55–60 Each Receive 3 Pieces of Candy

Numbers 65–70–75–80–85–90 Each Rec. 2 Pieces of Candy

All Other Numbers Each Receive 1 Piece of Candy

Last Sale in Each of First Three Sections Completed Receives 5 Pieces of Candy

Last Sale on Card Receives 15 Pieces of Candy

1¢ SALE

Sales of respondents' candy by means of said push card are made in accordance with the above legend or instructions. The said pieces of candy are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives one or more pieces of candy for the amount of money paid is thus determined wholly by lot or chance.

The respondents sell and distribute and have sold and distributed various assortments of candy along with push cards involving a lot or chance feature, but such assortments and push cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who, directly or indirectly, purchase respondents' said candy expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to, and place in the hands of, others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their candy and the sale of said candy by and through the use thereof and by the aid of said sales

plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candy to the purchasing public by the method and plan hereinabove set forth involves a game of chance or the sale of a chance to procure additional pieces of candy without additional cost. 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 method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their candy and in the element of chance involved therein and are thereby induced to buy and sell respondents' candy in preference to candy of said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondents from their said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 6, 1940, issued, and on July 8, 1940, served, its complaint in this proceeding upon respondents. Harry F. Crook and Gretchen Crook, individually and trading as Crook-Wallace Co., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said com-

plaint 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, Harry F. Crook and Gretchen Crook, are individuals trading as Crook-Wallace Co., with their office and principal place of business located at 415 North Second Street, Vincennes, Ind. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of candy and confectionery products to wholesale dealers, jobbers, and retail dealers. Respondents cause and have caused said products, when sold, to be transported from their principal place of business in the city of Vincennes, Ind., to purchasers thereof, at their respective points of location, in the various States of the United States and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by respondents in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are and have been in competition with other 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 their business, prior to June 1, 1940, respondents 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 respondents and is as follows:

This assortment consisted of a number of pieces of candy of uniform size and shape, together with a device commonly called a push card. The push card was divided into four sections and each of said sections contained 25 partially perforated disks on the face of which was printed the word "Push." Concealed within each of the said disks was a number which entitled the purchaser thereof to addi-

tional pieces of candy without additional cost when said number corresponded with any of the numbers set-out in the legend at the top of said card. The numbers aforesaid were effectively concealed until a purchase had been made and the disk separated or removed from the card. The last disk pushed out of each of the first three sections completed entitled the purchaser thereof to additional pieces of candy without additional cost. The last disk pushed from said card also entitled the purchaser thereof to additional pieces of candy without additional cost. The sales were 1 cent each and those not securing a winning number received 1 piece of said candy. The said card contained thereon a legend or instructions as follows:

NO LOSERS

Number 5 Receives 20 Pieces of Candy
Numbers 10–15 Each Receive 10 Pieces of Candy
Numbers 20–25–30–35 Each Receive 5 Pieces of Candy
Numbers 40–45–50–55–60 Each Receive 3 Pieces of Candy
Numbers 65–70–75–80–85–90 Each Rec. 2 Pieces of Candy
All Other Numbers Each Receive 1 Piece of Candy
Last Sale in Each of First Three Sections Completed Receives 5 Pieces of Candy
Last Sale on Card Receives 15 Pieces of Candy

1¢ SALE

Sales of respondents' candy by means of said push card were made in accordance with the above legend or instructions. The said pieces of candy were allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser received one or more pieces of candy for the amount of money paid was thus determined wholly by lot or chance.

The respondents, prior to the time hereinabove set forth, sold and distributed various assortments of candy along with push cards involving a lot or chance feature, but such assortments and push cards were similar to the one hereinabove described and varied only in detail.

PAR. 3. Retail dealers who, directly or indirectly, purchased respondents' said candy exposed and sold the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supplied to, and placed in the hands of, others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their candy and the sale of said candy by and through the use thereof and by the aid of said sales plan or method was 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 involved 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 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 contrary to public policy and such competitors refrain therefrom. The use of said method by respondents because of said game of chance had a tendency and capacity to, and did, unfairly divert trade to respondents from their said competitors who do not use the same or equivalent methods.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Harry F. Crook and Gretchen Crook, individually and trading as Crook-Wallace 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. Supplying to or placing in the hands of others candy or 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 such candy or other merchandise to the public.

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 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 respondents, Harry F. Crook and Gretchen Crook, 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 & 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, Mar. 19, 1941

Where a corporation engaged in the interstate sale and distribution of various drug products, including certain preparations designated as "Ardanol," "Chloro-Zol," and "Germ-I-Tabs"; by advertisements in magazines and trade journals and by circulars, leaflets, folders, pamphlets, booklets, and advertising literature—

(*a*) Represented, directly and by implication, that its product "Ardanol" was a cure or remedy for sterility in both sexes, would restore fertility of the generative organs, and was a reliable preventive of abortion, facts being said "Ardanol" was not a cure or remedy for sterility in either sex, did not possess any value as a preventative of abortion, and use thereof would not restore or beneficially affect the fertility of the generative organs;

(*b*) Represented, as aforesaid, that its "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 a competent or effective treatment for such ailments or conditions; and

(*c*) Represented that its "Germ-I-Tabs" and "Chloro-Zol" could be used to compound a reliable and effective douche for all needs and purposes in feminine hygiene, facts being said products, whether used separately or together, did not constitute a reliable or effective means of feminine hygiene and were of no value as such, other than for use in very weak solutions as a vaginal douche;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said statements and representations were true, and, by reason thereof, into purchase 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. 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 & 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 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 feotus 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, 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, mis-

lead 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 the 26th day of July 1940, issued, and on the 29th day of July 1940, served its complaint in this proceeding upon the 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 January 27, 1941, 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 through its president, John William Smith, 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, American Drug and 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 the 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 hereinbefore 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 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 its 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 preventative of abortion. The use of such product will not restore or beneficially affect the fertility of the generative organs. The 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 and they are of no value as such other than the use in very weak solutions as a vaginal douche.

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, 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 Com-

mission, 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, 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 advertisement represents, directly or through inference, that the preparation Ardanol is a cure or remedy for sterility in either of the sexes or that said preparation will restore or beneficially affect the fertility of the generative organs or that said preparation possesses any value as a preventive of abortion; that said preparations designated Chloro-Zol and Germ-I-Tabs constitute a reliable or effective means of feminine hygiene, or have any value in connection with feminine hygiene other than a vaginal douche; or 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 advertisement contains 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

CANDYMASTERS, INC.

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

Docket 4243. Complaint, Aug. 20, 1940—Decision, Mar. 19, 1941

Where a corporation engaged in competitive interstate sale and distribution of candy and confectionery products, including various assortments which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, including, as typical, small candy bars of uniform size and shape, together with certain larger bars and a four-section push card for use in sale and distribution of said candy to purchasing public under a plan, explained thereon, by which those securing certain numbers received, for the five cents paid, in lieu of small bars first referred to, "One Large Chocolate Divinity Bar" or "One Extra Large Chocolate Divinity Bar," and last number in each section received "One Super Special Bar";

Sold such assortments, along with said 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 aforesaid sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products in accordance with plan involving game of chance or sale of a chance to procure larger bars of candy without additional cost, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to use said or any method involving a game of chance or any other method contrary to public policy, refrain therefrom;

With the result that many persons were attracted by its said sales plan or method and the element of chance involved therein, and were thereby induced to buy and sell its said candy in preference to that of its aforesaid competitors, and with tendency and capacity, because of said game of chance, unfairly to divert trade in commerce to it from such competitors:

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

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

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

Mr. Clifton Parks, of St. Paul, Minn., 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 Candymasters, 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, Candymasters, Inc., is a corporation organized and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 3–5 North Fifteenth Street, Minneapolis, Minn. The corporate respondent was formerly known as Candycraft, Inc., having in November 1939, or thereabouts, by amendment to the certificate of incorporation, changed the name to Candymasters, Inc. Respondent is now, and for more than 10 months last past has been, engaged in the sale and distribution of candy and confectionery products to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused said products when sold to be transported from its principal place of business in the city of Minneapolis, Minn., to purchasers thereof, at their respective points of location, in the various States of the United States other than Minnesota 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 candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of small bars of candy of uniform size and shape and larger candy bars, the latter to be given as premiums, together with a device commonly called a push card. The push card is divided into four sections and each of said sections contains 25 partially perforated disks on the face of which is printed the word "push." Concealed within each of the said disks is a number which entitles the purchaser thereof to larger bars of candy without ad-

ditional cost when said number corresponds with any of the numbers set out in the legend at the top of said card. The last disk pushed out of each section also entitles the purchaser thereof to one of the said larger bars of candy. The sales are 5 cents each and those not securing a winning number receive one of the smaller bars of candy. The said card bears a legend or statement as follows:

* SWEEPSTAKES *

5c No Blanks — 5c 30 Big Prizes

Everybody Wins
Numbers 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40
RECEIVE * ONE LARGE CHOCOLATE DIVINITY BAR
Numbers 80, 82, 84, 86, 88, 90
RECEIVE * ONE EXTRA LARGE CHOCOLATE DIVINITY BAR
The Last Number in Each Section
RECEIVES * ONE SUPER SPECIAL BAR
All Other Numbers Receive a REGULAR BAR
NOTE: Only One Bar, Loaf or Package with Each 5¢ Purchase

Sales of respondent's candy by means of said push card are made in accordance with the above legend or instructions. The numbers aforesaid are effectively concealed until a purchase has been made and the disk separated or removed from said card. The said larger bars of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various assortments of candy along with push cards involving a lot or chance feature, but such assortments and push 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 its products in accordance with the sales plan hereinabove set forth. The use by respondent of such 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 and plan hereinabove set forth involves a game of chance or the sale of a chance to procure larger 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 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, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 20, 1940, issued and thereafter served its complaint in this proceeding upon respondent Candymasters, Inc., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 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 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, Candymasters, Inc., is a corporation organized and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 3–5 North Fifteenth Street, Minneapolis, Minn. The corporate respondent was formerly known as Candycraft, Inc., having in Novemvember 1939, or thereabouts, by amendment to the certificate of incorporation, changed the name to Candymasters, Inc. Respondent is now, and for more than 10 months last past has been, engaged in the sale and distribution of candy and confectionery products to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused said products when sold to be transported from its principal place of business in the city of Minneapolis, Minn., to purchasers thereof, at their respective points of location, in the various States of the United States other than Minnesota 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 candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of small bars of candy of uniform size and shape and larger candy bars, the latter to be given as premiums, together with a device commonly called a push card. The push card is divided into four sections and each of said sections contains 25 partially perforated disks on the face of which is printed the word "push." Concealed within each of the said disks is a number which entitles the purchaser thereof to larger bars of candy without additional cost when said number corresponds with any of the numbers set-out in the legend at the top of said card. The last disk pushed out of each section also entitles the purchaser thereof to one of

the said larger bars of candy. The sales are 5 cents each and those not securing a winning number receive one of the smaller bars of candy. The said card bears a legend or statement as follows:

5¢ * SWEEPSTAKES * 5¢
No Blanks 30 Big Prizes

Everybody Wins

Numbers 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40
RECEIVE * ONE LARGE CHOCOLATE DIVINITY BAR

Numbers 80, 82, 84, 86, 88, 90
RECEIVE * ONE LARGE CHOCOLATE DIVINITY BAR

The Last Number in Each Section
RECEIVES * ONE SUPER SPECIAL BAR

All Other Numbers Receive a REGULAR BAR

NOTE: Only One Bar, Loaf or Package with Each 5¢ Purchase

Sales of respondent's candy by means of said push card are made in accordance with the above legend or instructions. The numbers aforesaid are effectively concealed until a purchase has been made and the disk separated or removed from said card. The said larger bars of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various assortments of candy along with push cards involving a lot or chance feature, but such assortments and push 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 its products in accordance with the sales plan hereinabove set forth. The use by respondent of such sales plan or method in the sale of its candy and the sale of said candy by and through the use thereof and by 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 involes a game of chance or the sale of a chance to procure larger 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 there-

from. 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, Candymasters, 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 candy 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 candy or any 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 public.

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 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

ABRAHAM FRIEDMAN AND SAMUEL FRIEDMAN, DOING BUSINESS AS S. FRIEDMAN & SONS AND SUNRAY YARN HOUSE

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

Docket 4274. Complaint, Aug. 27, 1940—Decision, Mar. 19, 1941

Where two individuals engaged in interstate sale and distribution of knitting yarns, including two grades or types which had the general appearance of wool—

Represented, through use of legends "Sunray Cashmere Sport Yarn," "Sundry Cashmere Sport," "Cashmere Sport," and "Sunray Cashmere DeLaine," to designate and describe said yarns in labeling and advertising, that said products were made entirely from the hair of the cashmere goat, notwithstanding yarns in question were not products thus made, as long well known to purchasing public and held in high esteem by it, and as understood from term thus used, but contained, in one case no such fiber, and in case of said "Sunray Cashmere DeLaine" was composed of a mixture of hair of said goat and Australian wool;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to constituent fibers or materials of which said yarns were made, and to cause it to purchase substantial quantities thereof:

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

Before *Mr. Lewis C. Russell*, trial examiner.
Mr. Donovan Divet for the Commission.
Mr. Louis Fineman, 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 Abraham Friedman and Samuel Friedman, individuals doing businss as S. Friedman & Sons, and as Sunray Yarn House, 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, Abraham Friedman and Samuel Friendman, are individuals doing business as S. Friedman & Sons and as Sunray Yarn House, having their office and principal place of business at 349 Grand Street, New York, N. Y.

PAR. 2. The respondents are now and for more than 2 years last past have been engaged in the business of selling and distributing knitting yarns. The respondents sell their products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and cause said products, when sold, to be transported from their said place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States, other than the State of New York, and in the District of Columbia. Respondents maintain, and at all times mentioned herein 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. In the course and conduct of their said business, and for the purpose of promoting the sale of their said products, the respondents have engaged in the practice of falsely representing the constituent fiber or material from which their said products are made, said false representations being made by means of labels attached to said products, by advertisements inserted in periodicals, and by means of catalogs, circulars, and other printed and written matter distributed among prospective purchasers.

PAR. 4. The word "Cashmere" has long been applied and is now applied to a particular type of wool fiber which is made from the hair of the Cashmere goat, and products made from such material have for a long time been well and favorably known to the purchasing public. The word "Cashmere," when used in connection with the designation and description of yarns, or other products having the general appearance of wool fibers, is understood and accepted by the purchasing public as denoting a product composed entirely of the hair of the Cashmere goat.

PAR. 5. Among the products sold and distributed by the respondents as aforesaid are two types or grades of yarn, one of which is designated by the respondents as "Sunray Cashmere Sport Yarn" and as "Sunray Cashmere Sport" and as "Cashmere Sport," and the other of which is designated by respondents as "Sunray Cashmere De Laine." By the use of said designations the respondents have represented and do now represent that both of said yarns are made entirely from the hair of the Cashmere goat.

PAR. 6. The aforesaid representations are false and misleading. In truth and in fact neither of said yarns is made entirely from the hair of the Cashmere goat. Said yarn designated by respondents as "Sunray Cashmere Sport Yarn" and as "Sunray Cashmere Sport" and as "Cashmere Sport" contains no hair of the Cashmere goat, and said yarn designated as "Sunray Cashmere De Laine" is a mixture of hair of the Cashmere goat and Australian wool, with the Australian wool predominating.

PAR. 7. The use by the respondents of the aforesaid false and misleading representations with respect to their said products has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true, and into the purchase of substantial quantities of respondents' products.

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 August 27, 1940, issued and subsequently served its complaint in this proceeding upon respondents, Abraham Friedman and Samuel Friedman, individuals doing business as S. Friedman & Sons, and as Sunray Yarn House, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by Donovan Divet, attorney for the Commission, and in opposition to the allegations of the complaint by Louis Fineman, 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 and 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. The respondents, Abraham Friedman and Samuel Friedman, are individuals doing business as S. Friedman & Sons and as Sunray Yarn House, having their office and principal place of business at 349 Grand Street, New York, N. Y.

PAR. 2. The respondents are now and for more than 2 years last past have been engaged in the business of selling and distributing knitting yarns. The respondents sell their products to members of the purchasing public situated in New York and the various other States of the United States and in the District of Columbia. Approximately 25 percent of such sales are made to purchasers outside the State of New York. The respondents cause their products, when sold, to be transported by parcel post and by express to purchasers thereof at their respective points of location in various States of the United States other than the State of New York, and in the District of Columbia. Respondents maintain, and at all times mentioned herein 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. In the course and conduct of their business, and for the purpose of promoting the sale of their products, the respondents cause to be attached to their knitting yarns labels purporting to designate or describe the fibers or materials of which such yarns are made. Respondents also advertise their yarns in periodicals having a general circulation and by means of catalogs, circulars, and other advertising material distributed among prospective purchasers. Like the labels, this advertising material purports to describe, among other things, the fibers or materials of which the respondents' yarns are made.

Among the yarns sold and distributed by the respondents is a certain grade or type of yarn labeled and advertised by the respondents as "Sunray Cashmere Sport Yarn" and also as "Sunray Cashmere Sport" and as "Cashmere Sport." Another grade or type of yarn is labeled and advertised by the respondents as "Sunray Cashmere DeLaine." Both of these yarns have the general appearance of wool fibers.

PAR. 4. The evidence shows, and the Commission finds, that the word "Cashmere" has long been applied to a particular type of wool

fiber which is made from the hair of the cashmere goat, and such term is so understood by the purchasing public. Knitting yarns and other products made from such fiber have for a long period of time been well known to the purchasing public and are held in high esteem by the public. Members of the public purchasing a knitting yarn labeled "Cashmere" expect to receive, and understand that they are receiving, a product composed entirely of fiber made from the hair of the cashmere goat.

PAR. 5. Through the use of the legends "Sunray Cashmere Sport Yarn," "Sunray Cashmere Sport," "Cashmere Sport," and "Sunray Cashmere DeLaine" to designate and describe certain of their yarns, the respondents represent that such yarns are made entirely from fiber produced from the hair of the cashmere goat. The Commission finds that these representations are misleading and deceptive. The yarn designated "Sunray Cashmere Sport Yarn," "Sunray Cashmere Sport," and "Cashmere Sport" in fact contains no fiber produced from the hair of the cashmere goat, but is composed entirely of other wool fibers. The yarn designated "Sunray Cashmere DeLaine" is composed of a mixture of fiber produced from the hair of the cashmere goat and fiber produced from Australian wool.

PAR. 6. The Commission further finds that the use by the respondents of these misleading and deceptive representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the constituent fibers or materials of which respondents' products are made, and to cause such portion of the public to purchase substantial quantities of respondents' products.

CONCLUSION

The 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, testimony and other evidence introduced by Donovan Divet, counsel for the Commission, in support of the allegations of the complaint, and by Louis Fineman, counsel for the respondents, in opposition thereto, before Lewis C. Russell, an examiner of the

Commission theretofore duly designated by it, and brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Abraham Friedman and Samuel Friedman, individually and trading as S. Friedman & Sons and as Sunray Yarn House, 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 knitting yarns in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Cashmere," or any other word of similar import or meaning, to describe, designate or refer to any product which is not composed entirely of fiber derived from the hair of the cashmere goat; provided, however, that in the case of products composed in part of fiber derived from the hair of the cashmere goat and in part of other fibers, such word may be used as descriptive of the cashmere fiber content, if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material of such products.

2. Representing in any manner whatsoever that fabrics or products offered for sale or sold by respondents contain Cashmere Wool in greater quantity than is actually the case.

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

It is further ordered, That no provisions contained in this order shall be construed as authorizing or permitting, after July 14, 1941, the labeling of any wool product in any manner other than in strict conformity with the provisions of the Wool Products Labeling Act of 1939.

IN THE MATTER OF

LOUIS GREENBERG, TRADING AS RELIANCE JACKET CO.

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

Docket 4349. Complaint, Oct. 15, 1940—Decision, Mar. 19, 1941

Where an individual engaged in competitive interstate sale and distribution of sports jackets and other articles of merchandise; in solicitng sale of and in selling and distributing his products—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes when said merchandise was sold and distributed to ultimate consumers thereof, and distribution to operators and purchasing public of certain literature and instructions, including push cards, order blanks, illustrations of his said merchandise, and circulars explaning his plan of selling same and of alloting it as premiums or prizes to operators of said cards and to purchasing and consuming public, and included, as typical, plan providing, as explained on said card, that person selecting by chance from list set forth on card, the feminine name corresponding to that concealed under master seal, received outing jacket or other article of merchandise being thus disposed of, and under which amount paid was dependent upon number disclosed in disk pertaining to particular name selected, others receiving nothing for their money; and thereby

Supplied to and placed in the hands of others means of conducting lotteries in sale of his merchandise by those to whom he furnished such cards, and who made use thereof in selling and distributing his said products in accordance with such sales plan, involving a game of chance to procure one of said articles of merchandise at price much less than normal retail price thereof, and under which fact as to whether purchaser received an article of merchandise or nothing for amount of money paid was determined wholly by lot, 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 use said or any method involving game of 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 and by element of chance involved therein, and were thereby induced to buy and sell his said merchandise in preference to that offered and sold by his said competitors who do not use same or equivalent method, and with tendency and capacity unfairly to divert trade in commerce to him from his said competitors:

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

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

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

Gainsley, Goldstein & Levitt, of Minneapolis, Minn., 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 Greenberg, individually and trading as Reliance Jacket 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, Louis Greenberg, is an individual trading as Reliance Jacket Co., with his principal office and place of business located at 306 South Seventh Street, Minneapolis, Minn. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of sports jackets 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 Minnesota to purchasers thereof at their respective points of location in the various States of the United States other than Minnesota and in the District of Columbia. There is now and has been for more than one 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 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 merchandse 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 47 feminine names with ruled columns on the face thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 47 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 sport jacket. The push card bears a legend or instructions as follows:

New Style

Leather and
100 Per Cent
All-Wool

OUTING JACKET
In Men's or Ladies' Styles

Illustration and Description on Back of Card

Numbers 11 to 29—Pay What You Draw
Numbers over 29—Pay Only 29¢

(Total $11.92)

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, 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 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 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 thereby are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent 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 October 15, 1940, issued and on October 17, 1940, served its complaint in this proceeding upon respondent Louis Greenberg, individually and trading as Reliance Jacket 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 filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent, Louis Greenberg, is an individual trading as Reliance Jacket Co., with his principal office and place of business located at 306 South Seventh Street, Minneapolis, Minn. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of sports jackets 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 Minnesota to purchasers thereof at their respective points of location in the various States of the United States other than Minnesota 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 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 47 feminine names with ruled columns on the face thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 47 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 sport jacket. The push card bears a legend or instructions as follows:

New Style
Leather and
100 Per Cent
All-Wool
OUTING JACKET
In Men's or Ladies' Styles
Illustration and Description on Back of Card

Numbers 11 to 29—Pay What You Draw
Numbers over 29—Pay Only 29¢
(Total $11.92)

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, 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 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 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 thereby are induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent 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, Louis Greenberg, individually and trading as Reliance Jacket 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 sports jackets 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 such 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

CONSOLIDATED BOOK PUBLISHERS, INC.

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

Docket 4440. Complaint, Dec. 31, 1940—Decision, Mar. 19, 1941

Where a corporation engaged in the publication of its "Standard American Encyclopedia" and its "Universal Dictionary of the English Language," and in interstate sale and distribution thereof to newspapers and motion-picture theaters for use as premiums to stimulate circulation or attendance, to news agencies for resale to the trade, and to retailers for sale to the consuming public, and in preparing and furnishing advertising copy and mats to such customers for their use in circulars and other advertisements which it disseminated to the purchasing public throughout the various States—

(*a*) Represented, directly and indirectly that the price at which said encyclopedia was offered was available to the public only because of its sponsorship by the American Home Library Foundation, which was a beneficent and educational institution, and that, but for such sponsorship the price would be much higher, through such statements as "How can we give you the Standard American Encyclopedia, almost as a gift? The answer is simple. The American Home Library Foundation is dedicated by its sponsors to the glorious task of placing within reach of every home in America good books that for all too long have been the privilege of only the wealthy * * *";

Facts being price in question was not due to any subsidy from any beneficent or educational organization, said "Foundation" was not an organization dedicated to aforesaid "glorious task," but was an affiliated corporation which cooperated with it in the conduct of said business of selling encyclopedia in question for a profit and not for any beneficent or educational purpose, and price was not lower than it would be but for the activity of said "Foundation";

(*b*) Represented, as aforesaid, that the volumes composing such encyclopedia were "huge" and that it was a "Giant" 15-volume home reference library, editorial cost of producing which was a million dollars, that the edition was "limited" and available only to those who ordered promptly and that the "de-luxe" edition was bound in leather of unusual beauty and durability;

Facts being statements and representations in question were false and misleading, the volumes were of ordinary size, neither number of volumes nor extent of content thereof were such as to entitle encyclopedia to be designated "Giant," its cost of production was not the sum above set forth, copies thereof were available for all potential purchasers, and "de luxe" edition was not made of leather, but of imitation thereof; and

(*c*) Represented that its said dictionary was thoroughly new throughout and not a revised reproduction of an older publication, that the definitions of every word and phrase had been newly written, and that publication thereof, which took 12 years, was by or under the sponsorship of Oxford University;

Facts being it was not new throughout, but was an identical American publication of the dictionary first published in England in 1932 under same name by

another publisher, except for short additions as preface and one-and-one-half page appendix and other minor changes, definitions had not been newly written or rewritten, said amount of time was not required in preparation and publication of first edition, and neither Oxford nor any other such educational institution sponsored or contributed in any way to its publication;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that all such false statements and representations were true, and of inducing it to purchase said publications because of such mistaken belief:

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

Mr. John M. Russell for the Commission.

Campbell, Clithero & Fischer, 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 Consolidated Book Publishers, 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, Consolidated Book Publishers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located in Room 1305, Terminal Building, 537 Dearborn Street, Chicago, Ill.

Par. 2. Respondent, Consolidated Book Publishers, Inc., is now, and has been for over 2 years last past, engaged in the business of publishing and selling an encyclopedia known as Standard American Encyclopedia, and a dictionary called Universal Dictionary of the English Language. Respondent sells said publications to newspapers and motion-picture theaters for use as premiums to stimulate circulation or attendance, to news agencies for resale, to the trade and to retailers for sale to the consuming public; and has prepared and furnished advertising copy and mats to such customers which they use and have used in selling said publications, in various States of the United States and in the District of Columbia. Respondent causes said publications, when sold, to be transported from its aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in other States of the United States and

in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said publications 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 in connection with the promotion of the sale of its said publications in said commerce, and as an inducement for the purchase thereof by members of the purchasing public, respondent has caused, and is now causing, circulars and other advertisements to be printed and distributed to the purchasing public throughout the various States of the United States containing many false and misleading statements and representations describing said publications.

Among and typical of the statements and representations contained in said false advertisements used and disseminated by the respondent concerning the Standard American Encyclopedia are the following:

YOURS—ALMOST A GIFT

Through the American Home Library Foundation

We Are Able To Offer

THE STANDARD AMERICAN

ENCYCLOPEDIA

Giant 15-Volume Home Reference Library * * *

* * * * * * *

15 HUGE BOOKS

* * * * * * *

CLIP VOUCHER AT ONCE

Edition Limited! Claim your first volume today. A New Volume released every week.

* * * * * * *

ACT TODAY—NOW!

* * * A new book is yours every week, but you must act today for the edition available is limited and it is strictly FIRST COME—FIRST SERVED * * *

* * * * * * *

Delay Means Almost Certain Disappointment

* * * * * * *

A MILLION DOLLAR INVESTMENT

Was Required To Produce This Great New Home Reference Work.

* * * * * * *

WHY WE MAKE THIS OFFER

How can we afford to make this offer? How can we give you the Standard American Encyclopedia, almost as a gift?

The answer is simple. The American Home Library Foundation is dedicated by its sponsors to the glorious task of placing within reach of every home in America good books that for all too long have been the privilege of only the wealthy * * *

* * * * * * *

Would You Prefer A

SUPERB DE LUXE EDITION?

For A Fortunate Few Only

* * * as a special concession for those who can be satisfied with nothing but the best craftsmanship and material available we have prepared a special and limited DeLuxe edition of supremely rich and luxurious quality. Produced and finished in scarlet art. Leather of unusual beauty and durability—expensively die-embossed in a manner fit to grace the book-shelves of a king. A joy to behold! A rare pleasure to handle! A thrill to own!

Among and typical of the statements and representations made by respondent concerning the Universal Dictionary of the English Language are the following:

EDITED AT OXFORD UNIVERSITY

by Henry Cecil Wyld

Read the Facts About this Amazing Work

The new UNIVERSAL DICTIONARY comes to you with an outstanding background of authority and scholarship that makes it one of the most amazing achievements in dictionary history.

New and Complete

The UNIVERSAL DICTIONARY is thoroughly new throughout, NOT a revised, reprinted edition of an older publication. It contains all the newest additions to the English language. It is printed from new plates, in modern, easy-to-read form. It brings you the definitions of nearly 200,000 modern English words and phrases, with every definition newly written * * *

* * * * * * *

The UNIVERSAL DICTIONARY of the English Language.

* * * * * * *

The Book That Took Twelve Years To Build.

PAR. 4. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent represents, and has represented, directly and indirectly to customers and prospective customers that said Standard American Encyclopedia is available to the public at the price at which it is offered only because of its sponsorship by the American Home Library Foundation, a beneficent and educational institution, and

that but for such sponsorship the price at which said encyclopedia is offered would be much higher; that the volumes composing said encyclopedia are "huge;" that said encyclopedia is a "Giant" 15-volume home reference library; that said encyclopedia cost a million dollars to produce; that said edition is "limited" and available only to those who order promptly; that the "de luxe" edition is extremely rich and luxurious in quality, and that it is bound in leather of unusual beauty and durability; that respondent's Universal Dictionary of the English Language is thoroughly new throughout and is not a revised reproduction of an older publication; that the definitions of every word and phrase have been newly written; that it is printed from new plates; that it took 12 years to produce said dictionary; and that it is published by or under the sponsorship of Oxford University.

PAR. 5. The statements and representations so made and used by the respondent in connection with the sale of its said publication are false and misleading. In truth and in fact, the price at which said encyclopedia is offered for sale and sold to the public is not lower than it would be but for the activities of the "American Home Library Foundation;" the price at which said encyclopedia is sold is not the result of any subsidy from any beneficent or educational organization. The "American Home Library Foundation" is not an organization dedicated to the "glorious task" of placing within reach of every home in America said encyclopedia but is a trade name used by the respondent in conducting its business of selling said encyclopedia for a profit and not for any beneficent or educational purpose. The volumes composing said encyclopedia are not "huge" but of ordinary size; neither the number of volumes nor the extent of its content is such as to entitle said encyclopedia to be designated as a "Giant" home reference library, its cost of reproduction was not a million dollars; the supply of said encyclopedias available is not "limited" and copies are available for all potential purchasers. The so-called "de luxe" edition is of poor quality and its binding is not made of leather but of imitation leather. The said Universal Dictionary of the English Language is not new throughout but is an identical reprint of a 1932 edition by another publisher, except for a one-and-a-half page preface, two paragraphs entitled "Notes on the Marking of Pronunciation," a nine-page appendix, and other minor and immaterial changes. The definitions of every word and phrase have not been newly written or rewritten. It is not printed from new plates but from the plates used in printing said former edition. Twelve years' time was not required in preparing said dictionary for publication and in publishing the first edition thereof. Neither

Oxford University nor any such educational institution sponsored or contributed in any way to the publication of said dictionary.

PAR. 6. 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 publications because of such erroneous and mistaken belief engendered as above set forth.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 31st day of December 1940, issued and on the 2d day of January 1941, served its complaint in this proceeding upon said respondent, Consolidated Book Publishers, 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. A stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent's counsel, Campbell, Clithero and Fischer, 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 the 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 argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Consolidated Book Publishers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located in Room 1305, Terminal Building, 537 Dearborn Street, Chicago, Ill.

PAR. 2. Respondent, Consolidated Book Publishers, Inc., is now, and has been for over 2 years last past, engaged in the business of publishing and selling an encyclopedia known as Standard American Encyclopedia, and a dictionary called Universal Dictionary of the English Language. Respondent sells said publications to newspapers and motion-picture theaters for use as premiums to stimulate circulation or attendance, to news agencies for resale, to the trade and to retailers for sale to the consuming public; and has prepared and furnished advertising copy and mats to such customers which they use and have used in selling said publications, in various States of the United States and in the District of Columbia. Respondent causes said publications, when sold, to be transported from its aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said publications 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 in connection with the promotion of the sale of its said publications in said commerce, and as an inducement for the purchase thereof by members of the purchasing public, respondent has caused circulars and other advertisements to be printed and distributed to the purchasing public throughout the various States of the United States containing many false and misleading statements and representations describing said publications.

Among and typical of the statements and representations contained in said false advertisements used and disseminated by the respondent concerning the Standard American Encyclopedia are the following:

YOURS—ALMOST A GIFT
Through the American Home Library Foundation
We Are Able To Offer
THE STANDARD AMERICAN
ENCYCLOPEDIA
Giant 15-Volume Home Reference Library * * *

* * * * * * *

15 HUGE BOOKS

* * * * * * *

CLIP VOUCHER AT ONCE

Edition Limited! Claim your first volume today. A New Volume released every week.

* * * * * * *

ACT TODAY—NOW!

* * * A new book is yours every week, but you must act today for the edition available is limited and it is strictly FIRST COME—FIRST SERVED * * *

* * * * * * *

Delay Means Almost Certain Disappointment.

* * * * * * *

A MILLION DOLLAR INVESTMENT

Was Required To Produce This Great New Home Reference Work.

* * * * * * *

WHY WE MAKE THIS OFFER

How can we afford to make this offer? How can we give you the Standard American Encyclopedia, almost as a gift?

The answer is simple. The American Home Library Foundation is dedicated by its sponsors to the glorious task of placing within reach of every home in America good books that for all too long have been the privilege of only the wealthy * * *

* * * * * * *

Would You Prefer A

SUPERB DE LUXE EDITION?

For A Fortunate Few Only

* * * as a special concession for those who can be satisfied with nothing but the best craftsmanship and material available we have prepared a special and limited DeLuxe edition of supremely rich and luxurious quality. Produced and finished in scarlet art. Leather of unusual beauty and durability—expensively die-embossed in a manner fit to grace the book-shelves of a king. A joy to behold! A rare pleasure to handle! A thrill to own!

Among and typical of the statements and representations made by respondent concerning the Universal Dictionary of the English Language are the following:

EDITED AT OXFORD UNIVERSITY

by Henry Cecil Wyld

Read the Facts About this Amazing Work

The new UNIVERSAL DICTIONARY comes to you with an outstanding background of authority and scholarship that makes it one of the most amazing achievements in dictionary history.

New and Complete

The UNIVERSAL DICTIONARY is thoroughly new throughout, NOT a revised, reprinted edition of an older publication. It contains all the newest additions to the English language. It is printed from new plates, in modern, easy-to-read form. It brings you the definitions of nearly 200,000 modern English words and phrases, with every definition newly written * * *

* * * * * * *

The UNIVERSAL DICTIONARY of the English Language.

* * * * * * *

The Book That Took Twelve Years To Build.

PAR. 4. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented, directly and indirectly to customers and prospective customers that said Standard American Encyclopedia is available to the public at the price at which it is offered only because of its sponsorship by the American Home Library Foundation, a beneficent and educational institution, and that but for such sponsorship the price at which said encyclopedia is offered would be much higher; that the volumes composing said encyclopedia are "huge"; that said encyclopedia is a "Giant" 15-volume home reference library; that the editorial cost of producing said encyclopedia was a million dollars; that said edition is "limited" and available only to those who order promptly; that the "de luxe" edition is bound in leather of unusual beauty and durability; that respondent's Universal Dictionary of the English Language is thoroughly new throughout and is not a revised reproduction of an older publication; that the definitions of every word and phrase have been newly written; that it took 12 years to produce said Dictionary; and that it is published by or under the sponsorship of Oxford University.

PAR. 5. The statements and representations so made and used by the respondent in connection with the sale of its said publication are false and misleading. In truth and in fact, the price at which said encyclopedia is offered for sale and sold to the public is not lower than it would be but for the activities of the "American Home Library Foundation;" the price at which said encyclopedia is sold is not the result of any subsidy from any beneficent or educational organization. The "American Home Library Foundation" is not an organization dedicated to the "glorious task" of placing within reach of every home in America said encyclopedia but was the name of an affiliate corporation which cooperated with the respondent in the conduct of said business of selling said encyclopedia for a profit and not for any beneficent or educational purpose. The volumes com-

posing said encyclopedia are not "huge" but of ordinary size; neither the number of volumes nor the extent of its content is such as to entitle said encyclopedia to be designated as a "Giant" home reference library; its editorial cost of production was not a million dollars; the supply of said encyclopedias available is not "limited" and copies are available for all potential purchasers. The so-called "de luxe" edition's binding is not made of leather but of imitation leather. The said Universal Dictionary of the English Language is not new throughout but is an American publication of the identical Dictionary first published in England in 1932 under its same name by another publisher, except for a one-and-a-half page preface, two paragraphs entitled "Notes on the Marking of Pronunciation," one page of additional addenda and corrigenda, a nine-page appendix, and additional minor changes. The definitions of every word and phrase have not been newly written or rewritten. Twelve years' time was not required in preparing said dictionary for publication and in publishing the first edition thereof. Neither Oxford University nor any such educational institution sponsored or contributed in any way to the publication of said dictionary.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, had a tendency and capacity to and did 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 publications 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 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, Consolidated Book Publishers, 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 encyclopedia known as Standard American Encyclopedia and its dictionary called Universal Dictionary of the English Language, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the price at which said encyclopedia is offered for sale or sold to the public is lower than it otherwise would be but for the activities of the "American Home Library Foundation" or that the price at which said encyclopedia is sold is the result of any subsidy from any beneficent or educational organization, or of any other subsidy; that the "American Home Library Foundation" is a beneficient or educational organization or is anything other than an affiliated corporation which cooperated with respondent in selling said encyclopedia for a profit; that the volumes of said encyclopedia are "huge" or of other than ordinary size; that said encyclopedia is a "Giant" home reference library; that the editorial cost of production of such encyclopedia was a million dollars or any other sum beyond the actual cost thereof; that the supply of said encyclopedias is limited; that the so-called "de luxe" edition's binding is made of leather or of other than imitation leather.

2. Representing that said Universal Dictionary of the English Language is new throughout or is not a revised reproduction of an older production or is anything other than an American publication of the same dictionary first published in England in 1932 under its same name by another publisher except for specified changes which, in fact, have been made; that the definitions of the words or phrases of said 1932 edition of said dictionary have been newly written or rewritten; that twelve years or any longer period of time than was actually required was required to prepare said dictionary for publication and in publishing the first edition thereof; that Oxford University or any such educational institution sponsored or contributed in any way to the publication of said dictionary.

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

MARLBOROUGH LABORATORIES, INC., MARLBOROUGH SALES CO., INC., MADISON SALES CORPORATION, WINDSOR MANUFACTURING CO., INC., AND WILLIAM ZEFFERT, AS OFFICER THEREOF, ET AL.[1]

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

Docket 3732. Complaint, Mar. 7, 1939—Decision, Mar. 20, 1941

Where three corporations and an individual, who was the managing head and the controlling and guiding spirt of each, engaged in manufacture of dental and shaving creams, and in interstate sale and distribution thereof in substantial competition with others engaged in similar sale and distribution of such products, including many who do not misrepresent their products—

(*a*) Price-marked tubes and cardboard cartons and containers of certain shaving creams with statements "Price 50 cents" or "Price 75 cents," facts being said printed prices did not, as generally understood, and made use of by reputable manufacturers, indicate said items' usual or contemplated retail selling prices, by which, to a substantial extent, public measures quantity, quality, and retail value of an article; items in question were not 50-cent or 75-cent values, but were sold to wholesalers and retailers at 4¾ cents and 6¼ cents, respectively, and to ultimate purchasers at not over 10 cents each; and

Where a shaving cream known as "Palmolive Shave Cream" had been on the market for several years and there had been created among purchasers and users thereof a goodwill of substantial value to its manufacturer and distributor; and thereafter said three corporations and individual above referred to—

(*b*) Marketed and branded, and described and referred to shaving cream offered and sold by them, container and package of which simulated in color and general appearance that of aforesaid competitive "Palmolive Shave Cream," as "Palm and Olive Shaving Cream," with tendency to confuse and mislead purchasers and cause them to believe that latter was such competitive product, and as a result of such belief, to purchase same as and for said competitive "Palmolive Shave Cream";

(*c*) Made use of letters "D. D. S." and words "Doctors, Dentists, Surgeons" in such statements as "D. D. S. TOOTH PASTE For the Gums. Contains over 51% of Milk of Magnesia. 60¢," and "Doctors Dentists Surgeons DENTAL CREAM," with effect of leading purchasing public erroneously to believe that such tooth pastes were compounded from the formula of a member of the medical or dental profession, or were made and manufactured under direction and supervision of a member thereof;

[1] For reasons set forth in findings, complaint was dismissed as to respondent Marlborough Laboratories, Inc., and other respondents not named above.

(*d*) Enclosed in much larger or "slack filled" cartons, some of its said shaving creams and tooth pastes made and put up in ordinary-sized tubes, and thereby, through employment of deceptive practice of "slack filling," use of which is unfair to honest competitors, misled and deceived purchasers into the belief that they were securing a greater quantity of products in question than they would receive in ordinary package or container;

With effect of diverting trade unfairly to them from their competitors; to the injury of competition in commerce:

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

Before *Mr. John L. Hornor* and *Mr. Lewis C. Russell*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Shacter, Paris & Goldman, of New York City, for Marlborough Sales Co., Inc., Madison Sales Corp., Windsor Manufacturing Co., Inc., and William Zeffert.

Lichtenstein, Schwartz & Friedenberg, of Hoboken, N. J., for Atlantic Manufacturing Co., Henry Braun, Charles Kleinbeck, and Caesar Muzzi.

Mr. W. W. Corlett, of New York City, for Collapsible Tube Manufacturers Association, intervenor.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Marlborough Laboratories, Inc., a corporation; Marlborough Sales Co., Inc., a corporation; Madison Sales Corporation, a corporation; Windsor Manufacturing Co., Inc., a corporation; Harry Silverstein, David Kamerman, and William Zeffert, individually and as officers of said Marlborough Laboratories, Inc., Marlborough Sales Co., Inc., Madison Sales Corporation, Windsor Manufacturing Co., Inc.; Frances Chorba, an individual; Atlantic Manufacturing Co., a corporation; and Henry Braun, Charles Kleinbeck, and Caesar Muzzi, individually and as officers of Atlantic Manufacturing 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, Marlborough Laboratories, Inc., is a New York corporation having its principal office and place of busi-

ness located at 29 West Fifteenth Street, in the city of New York, in the State of New York.

Respondent, Marlborough Sales Co., Inc., is a New York corporation having its principal office and place of business located at 29 West Fifteenth Street, in the city of New York, in the State of New York.

Respondent, Madison Sales Corporation, is a New York corporation with its principal office and place of business located at 29 West Fifteenth Street, in the city of New York, in the State of New York.

Respondent, Windsor Manufacturing Co., Inc., is a New York corporation with its principal office and place of business located at 29 West Fifteenth Street, in the city of New York, in the State of New York.

Respondents, Harry Silverstein, David Kamerman, and William Zeffert, are president, secretary, and treasurer, respectively, of the respondent corporations, Marlborough Laboratories, Inc., and Marlborough Sales Co., Inc. Said individual respondents are also president, secretary-treasurer, and general manager, respectively, of the respondent corporations, Madison Sales Corporation and Windsor Manufacturing Co., Inc. As such officers of said respondent corporations, said individual respondents, Harry Silverstein, David Kamerman, and William Zeffert, have their principal office and place of business at the above-mentioned address of said respondent corporations, and they formulate, control, and direct the policies and practices of said corporate respondents and cooperate with all of the respondents herein in doing the acts and things hereinafter alleged.

Respondent, Frances Chorba, is an individual with offices at 38–44 West Twenty-sixth Street, in the city of New York, in the State of New York, and owns approximately one-third of the capital stock in the aforementioned corporate respondents and, through stock ownership, participates in the formulation, control, and direction of the sales policies and practices of said corporate respondents in cooperation with the aforementioned individual respondents. Said respondent has acted in concert with some or all of the respondents herein named in doing the acts and things hereinafter mentioned.

Respondent, Atlantic Manufacturing Co., is a New Jersey corporation having its principal office and place of business located at 555 Belmont Avenue in the city of Newark, in the State of New Jersey.

Respondents, Henry Braun, Charles Kleinbeck, and Caesar Muzzi, are, respectively, president, vice president and general manager, and secretary-treasurer of respondent, Atlantic Manufacturing Co. As

such officers of said respondent corporation, said individual respondents have their principal office and place of business at the above-mentioned address of said respondent corporation and they formulate, control, and direct the policies and practices of said corporate respondent and cooperate with all of the respondents herein in doing the acts and things hereinafter alleged. Each of said respondents has acted in concert or in cooperation with one or more of the other respondents in doing the acts and things hereinafter alleged.

PAR. 2. Respondents have been for several years last past engaged in the manufacture, sale, and distribution of dental and shaving creams and other drug and cosmetic notions to retail dealers and peddlers purchasing for resale, and also to the public direct. In the course and conduct of their respective businesses, respondents offer said products for sale and sell the same in commerce between the States of New York and New Jersey and the several other States of the United States and in the District of Columbia. When said products are sold, respondents transport, or cause the same to be transported, from their respective places of business in the States of New York and New Jersey to purchasers thereof located in States of the United States other than the States of New York and New Jersey and in the District of Columbia. There has been for several years last past, and still is, a constant current of trade and commerce in said products so sold by respondents between and among the various States of the United States and in the District of Columbia. Respondents are now, and for several years last past have been, engaged in substantial competition with individuals, firms, partnerships, and corporations engaged in the manufacture, sale, and distribution, or 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. Among said competitors are many who do not engage in the acts and practices engaged in by said respondents as hereinafter alleged and who do not, in any manner, misrepresent their products.

PAR. 3. In the course and conduct of their business as aforesaid, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products through the United States mails, by catalogs, price lists, circulars, and other printed or written matter, all of which are distributed in commerce between and among the various States of the United States, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said products; and have disseminated and are now disseminating, and have caused

and are now causing the dissemination of, false advertisements concerning their said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said products in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

CLAYSELL SHAVING CREAM
WITH OIL OF BAY. Price 75 cents.

PARAMOUNT BRUSHLESS SHAVING
CREAM
For a Good Quick Shave. Price 75¢.

CLAYSELL SHAVING CREAM
BRUSHLESS

Price 50¢.

The retail prices indicated, as above alleged, of 75 cents for "Claysell Shaving Cream," 75 cents for "Paramount Brushless Shaving Cream," and 50 cents for "Claysell Shaving Cream, Brushless," appear on either the carton or tube in which said product is sold to ultimate consumers, and were and are not intended by the respondents, or purchaser purchasing for resale, to represent the true retail prices or the true retail values of such merchandise so price marked. The purported retail prices and values so marked on said merchandise, or the containers thereof, were and are intended by the respondents and by purchasers for resale to be, and they were and are, far in excess of the retail prices intended to be charged, and actually charged, on a sale of such merchandise to the ultimate consumer purchasing in the usual course of trade, and far in excess of the true values of such merchandise so marked. The above-mentioned merchandise is sold by the respondents to purchasers for resale at 6 cents, 7½ cents, and 7½ cents, respectively, per tube, and the retail prices so marked and represented were and are wholly fictitious and in no sense represent the true retail prices or values of said merchandise.

The above and foregoing instances of fictitious price markings are typical of the practices of the respondents with regard to many articles of merchandise, too numerous to set out herein, where the price to the ultimate purchaser is indicated and represented in the advertising matter so disseminated as greatly in excess of the true selling price or value of such merchandise to the ultimate purchaser.

Over a period of many years manufacturers have, in many trades, formed the custom of marking or stamping on the article or item of

manufacture, or on the container thereof, the retail price at which said manufacturers suggest the retailer should sell the item or article to the ultimate consumer purchaser. This suggested retail price, so stamped or marked, is intended to represent the cost of the manufacture of the article plus a reasonable profit for the manufacturer and retailer, and, consequently, to represent the approximate retail sale value of the item. The range of the suggested retail price is intended by the manufacturer to be indicative of the quality and character of the ingredients used and the process by which the item is manufactured. The public generally understands the custom herein detailed and has been led to, and does, place its confidence in the price markings so stamped and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

For many years a substantial portion of the consuming public has expressed, and has had, a marked preference for soaps, dental creams, shaving creams, and other toilet articles that are composed of superior ingredients and 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 manufactured with the usual and customary ingredients or with inferior ingredients. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail prices on said products as an indication of the superior quality and character of the product and its resulting higher value. Whenever a genuinely superior product, so stamped or marked with the retail price thereof, is offered for sale at a substantially reduced price, the general purchasing public has been led to believe, and does believe, that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail value thereof over ordinary products sold for the regular price which is lower than the normal retail price of the superior product in the customary course of trade.

The use by the respondents of the above and foregoing false and fictitious price markings on said products places in the hands of so-called 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 through offering for sale and selling said products 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 con-

suming public at and for the retail price stamped on such products or on their containers. In truth and in fact, the merchandise upon which said false and fictitious price markings are placed are not superior products normally sold in the usual channels of retail trade for the retail price indicated or for any price closely approaching the price indicated.

PAR. 4. Among the competitors referred to in paragraph 2 hereof is a manufacturer and distributor of a shaving cream known as, and sold under the name of, "Palmolive Shave Cream." This product has been on the market for several years in the trade territory in which the respondents sell and offer for sale their said shaving creams and other drug and cosmetic notions. Palmolive Shave Cream has long been recognized by the purchasing public as a product of merit and excellence, and there has been created, as a result of the reputation established because of the merit of said product, a goodwill among purchasers and users of said shaving cream of substantial value to the manufacturer and distributor thereof.

Among the shaving creams offered for sale and sold by the respondents as aforesaid is a shaving cream which is marketed and branded, and described and referred to by the respondents as, "Palm and Olive Shaving Cream." The container and package of respondents' shaving cream resemble in size and general appearance the container and package in which the competitive product "Palmolive Shave Cream" is offered for sale and sold. Respondents' said product "Palm and Olive Shaving Cream" is not the product long known as and sold under the name "Palmolive Shave Cream."

The use by the respondents of the name "Palm and Olive Shaving Cream" and the use of a package and container similar in size and appearance to that of the competitive product confuse and mislead purchasers of shaving creams and lead many such purchasers to believe that respondents' said product is the competitive product, "Palmolive Shave Cream," and as a result of this mistaken and erroneous belief to purchase respondents' said product as and for the competitive product, "Palmolive Shave Cream," thereby unfairly diverting trade in said commerce to the respondents from their said competitor.

PAR. 5. Among the statements and representations used by the respondents in designating, describing, and referring to certain tooth paste offered for sale and sold by them are the following:

D. D. S. TOOTH PASTE
For the Gums. Contains over 51%
of Milk of Magnesia. 60¢

Doctors
Dentists
Surgeons
DENTAL CREAM

The letters "D. D. S." are used to indicate and designate a doctor of dental surgery and are so recognized and understood by the purchasing public. The use of the letters "D. D. S." and the words "Doctors," "Dentists," and "Surgeons" in designating, describing, and referring to said tooth paste leads the purchasing public mistakenly and erroneously to believe that said tooth paste was compounded from the formula of a member of the dental or medical profession or that the same was made and manufactured under the direction and supervision of a member of the dental or medical profession.

In truth and in fact, said tooth paste is not compounded or manufactured under the direction or supervision of a member of the dental or medical profession, nor is it manufactured under a formula prepared by a member of either of said professions.

Many members of the purchasing and consuming public prefer a dental cream manufactured from a formula prepared by, or under the direction and supervision of, a member of the dental or medical profession, and the use of the letters "D. D. S." and the words "Doctors," "Dentists," and "Surgeons" causes many members of the public to purchase respondents' said dental cream because of the mistaken and erroneous belief engendered as aforesaid.

Respondents designate, describe, mark, and refer to many of their said shaving creams, tooth pastes, and other drug and cosmetic products as "Giant Size," when in truth and in fact no greater quantity of the product so designated, described, marked, and referred to is delivered to the ultimate purchaser than is usually and ordinarily found in containers for such product which are not designated, described, marked, and referred to as "Giant Size," though in many instances the respondents use a "Giant Size" pasteboard carton or container in which to place said ordinary-sized metal tubes, thereby leading the purchasing public erroneously and mistakenly to believe that they are securing a greater quantity of such product than they would receive in the ordinary package or container.

PAR. 6. Respondent, Atlantic Manufacturing Co., and its aforesaid officers, Henry Braun, Charles Kleinbeck, and Caesar Muzzi, manufacture, sell, and distribute to the other respondents named herein the metal tubes used by them in connection with the packaging, sale, and distribution of their dental and shaving creams and other drug and cosmetic notions. These metal tubes, when manufactured, are

labeled and branded with the false statements and representations hereinabove set out and with other statements and representations of similar import and effect, and the respondents, Atlantic Manufacturing Co., and its aforesaid officers, Henry Braun, Charles Kleinbeck, and Caesar Muzzi, thus place in the hands of the other respondents named herein an instrument and a means whereby a fraud may be committed upon a substantial portion of the purchasing public, enabling such other respondents, and the retailers buying from them for resale, to misrepresent to the ultimate consumer the content of said metal tubes.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations in advertisements, disseminated as aforesaid, with respect to said products, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public by inducing them erroneously and mistakenly to believe—

1. That the various items of merchandise described in respondents' catalogs, price lists, circulars and other printed or written matter were and are of superior value and were and are sold and distributed by the respondents with the intent, purpose, and expectation that said products should be sold at retail prices closely approximating the prices represented and indicated by the respondents.

2. That the said products were and are composed of superior ingredients and were and are products which ordinarily retail in the usual course of trade for prices closely approximating those represented and indicated by the respondents.

3. That certain of said products were and are put up and offered for sale and sold in larger packages than the usual and customary size in which such products are offered for sale and sold.

4. That the product designated, described, and referred to by the respondents as "Palm and Olive Shaving Cream" is "Palmolive Shave Cream," the product manufactured and sold by a competitor.

5. That certain of the tooth pastes offered for sale and sold by the respondents are compounded and manufactured under the direction and supervision of, and from a formula prepared by, a member of the dental or medical profession.

PAR. 8. As a result of the mistaken and erroneous beliefs engendered as aforesaid, a substantial portion of the purchasing public has purchased substantial quantities of respondents' said products and trade has been diverted unfairly to the respondents from their competitors in said commerce. In consequence thereof, injury has been and is now being done by respondents to competition in commerce

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 7, 1939, issued and served its complaint in this proceeding upon the respondents, Marlborough Laboratories, Inc., a corporation; Marlborough Sales Co., Inc., a corporation; Madison Sales Corporation, a corporation; Windsor Manufacturing Co., Inc., a corporation; Harry Silverstein, David Kamerman, and William Zeffert, individually and as officers of Marlborough Laboratories, Inc., Marlborough Sales Co., Inc., Madison Sales Corporation, Windsor Manufacturing Co., Inc.; Frances Chorba, an individual; Atlantic Manufacturing Co., a corporation; and Henry Braun, Charles Kleinbeck, and Caesar Muzzi, individually and as officers of Atlantic Manufacturing Co., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of answer thereto on behalf of Marlborough Sales Co., Inc., Madison Sales Corporation, Windsor Manufacturing Co., Inc., corporate respondents herein; and William Zeffert, one of the individual respondents named herein, and a separate answer thereto on behalf of Atlantic Manufacturing Co., a corporate respondent; and Henry Braun, Charles Kleinbeck, and Caesar Muzzi, individually and as officers of said Atlantic Manufacturing Co., testimony and other evidence in support of the allegations of said complaint were introduced by Joseph C. Fehr, attorney for the Commission, and in opposition to the allegations of the complaint by Julius Lichtenstein, attorney for respondent, Atlantic Manufacturing Co., and Henry Braun, Charles Kleinbeck, and Caesar Muzzi, individually and as officers of said Atlantic Manufacturing Co.; and William Zeffert, acting as his own counsel, before John L. Hornor and Lewis 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 aforesaid answers thereto, testimony and other evidence, brief in support of the complaint (respondents not having filed briefs and oral argument not having been requested); and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Marlborough Sales Co., Inc., Madison Sales Corporation, and Windsor Manufacturing Co., Inc., are corporations organized and existing under and by virtue of the laws of the State of New York with their principal offices and places of business located at 29 West Fifteenth Street, in the city of New York in the State of New York. For several years last past respondents, Marlborough Sales Co., Inc., and Madison Sales Corporation, have engaged in the manufacture and the sale and distribution of dental and shaving creams manufactured for them by respondent, Windsor Manufacturing Co., Inc., to retail dealers and peddlers purchasing for resale, and also to the public direct. When said products were sold, respondents transported, or caused the same to be transported, from their respective places 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, and for several years last past have maintained, and do maintain a constant current of trade and commerce in said products between and among the various States of the United States and in the District of Columbia.

Respondents are now, and for several years last past have been, engaged in substantial competition with individuals, firms, partnerships, and corporations 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. Among said competitors are many who do not engage in the acts and practices hereinafter noticed and who do not, in any manner, misrepresent their products.

Respondents, Marlborough Sales Co., Inc., Madison Sales Corporation, and Windsor Manufacturing Co., Inc., are stock corporations, still in existence as corporations, but have not been actively engaged in business since the latter part of 1938. In 1938 respondent, Marl-

borough Sales Co., Inc., was succeeded by respondent, Madison Sales Corporation, and subsequently the assets of respondent, Madison Sales Corpporation, were sold to the National Gibson Co., a corporation, not a respondent herein.

During all the times mentioned herein, respondent, William Zeffert, has been, de facto, the managing head of each and all of said corporate respondents. Respondents, Harry Silverstein and David Kamerman, were for a time officers of and financially interested in said corporate respondents, Marlborough Sales Co., Inc., Madison Sales Corporation, and Windsor Manufacturing Co., Inc. Respondent, Frances Chorba, was for a time an officer of Marlborough Sales Co., Inc., and was also financially interested in Madison Sales Corporation, but not in Windsor Manufacturing Co., Inc. Neither said Frances Chorba, Harry Silverstein, nor David Kamerman were ever active in the management of any of the respondent corporations, or exercised any control over them at any time while they were connected with them, being interested only to the extent of investing money in or lending money and putting up machinery, crockery, and transferring other assets to the said corporate respondents. The managerial, controlling, and guiding spirit in all said respondent corporations, other than Atlantic Manufacturing Co., was respondent, William Zeffert.

The evidence shows that no such corporation as Marlborough Laboratories, Inc., has existed or had any connection with the matters and things hereinafter set forth.

The allegations against Atlantic Manufacturing Co., a corporation; and Henry Braun, Charles Kleinbeck, and Caesar Muzzi, individually and as officers of said Atlantic Manufacturing Co.; Harry Silverstein, David Kamerman, and Frances Chorba have not been sustained.

The term "respondents," when hereinafter used, shall include only Marlborough Sales Co., Inc., Madison Sales Corporation, Windsor Manufacturing Co., Inc., all corporate respondents, and William Zeffert.

PAR. 2. Among the products made by the Windsor Manufacturing Co., Inc., which were sold in commerce, as herein set out, first by Marlborough Sales Co., Inc., and later by its successor, Madison Sales Corporation, were items marked as follows:

CLAYSELL SHAVING CREAM
WITH OIL OF BAY. Price 75 Cents.

PARAMOUNT BRUSHLESS SHAVING
CREAM
For a Good, Quick Shave. Price 75¢

CLAYSELL SHAVING CREAM
BRUSHLESS
Price 50¢

These items of merchandise were so designated and price-marked on the tubes as well as on the cardboard cartons and containers thereof. None of them were ever sold or intended to be sold either to jobbers, retailers, or ultimate purchasers at the prices marked on them, and are not 50-cent or 75-cent values. As a matter of fact these items were sold by respondents to wholesalers at a price not exceeding 4¾ cents each or $7.20 a gross; were sold to the retail dealer at a price not exceeding 6¼ cents each or 75 cents per dozen; and were never sold to the ultimate purchaser for more than 10 cents each.

PAR. 3. To a substantial extent the public measures the quality and retail value of an article of merchandise by its usual selling price. When a printed retail selling price appears on an article of merchandise, it is generally understood that it indicates the usual retail selling price. A comparatively high price conveys an impression to the public of higher quality. Reputable manufacturers price-mark articles of merchandise sold by them to retailers with the intention that the suggested prices will be followed, at least approximately.

PAR. 4. Among the competitors referred to in paragraph 1 hereof is a manufacturer and distributor of a shaving cream known as, and sold under the name of, "Palmolive Shave Cream." This product has been on the market for several years in the trade territory in which the respondents sell and offer for sale their said shaving creams and other drug and cosmetic notions. "Palmolive Shave Cream" has long enjoyed a substantial demand on the part of the purchasing public and there has been created a goodwill among purchasers and users of said shaving cream of substantial value to the manufacturer and distributor thereof.

Among the shaving creams offered for sale and sold by the respondents as aforesaid is a shaving cream which is marketed and branded, and described and referred to, by the respondents, as "Palm and Olive Shaving Cream." The container and package of respondents' said shaving cream simulate in color and general appearance the container and package of said competitive product, "Palmolive Shave Cream."

The use by the respondents of the name "Palm and Olive Shaving Cream" and the use of a package and container similar in color and general appearance to that of the competitive product tend to confuse and mislead purchasers and to cause them to believe that respondents' said product is the competitive product, "Palmolive Shave Cream," and as a result of this mistaken and erroneous belief to purchase respondents' said product as and for the competitive product, "Palmolive Shave Cream."

PAR. 5. Among the statements and representations used by the respondents in designating, describing, and referring to certain tooth pastes, offered for sale and sold by them are the following:

D. D. S. TOOTH PASTE
For the Gums. Contains over 51%
of Milk of Magnesia. 60¢

Doctors
Dentists
Surgeons
DENTAL CREAM

The use of the letters "D. D. S." and the words "Doctors, Dentists, Surgeons" has the capacity and tendency to, and does, lead the purchasing public mistakenly and erroneously to believe that said tooth pastes are compounded from the formula of a member of the dental or medical profession or that the same are made and manufactured under the direction and supervision of a member of the dental or medical profession.

In truth and in fact, said tooth pastes are not compounded or manufactured under the direction or supervision of a member of the dental or medical profession, nor are they manufactured under a formula prepared by a member of either of said professions.

PAR. 6. Some of the shaving creams and tooth pastes made and sold by respondents are put up in ordinary-sized tubes and then enclosed in much larger cartons. This method of filling misleads and deceives purchasers of such products into the belief that they are securing a greater quantity of such products than they would receive in the ordinary package or container. The packaging of products in such a manner is known in the trade as "slack filling," a practice which misleads and deceives the purchasing public and is unfair to honest competitors.

PAR. 7. The foregoing acts and practices of respondents have the capacity and tendency to divert, and do divert, trade unfairly to the respondents from their said competitors. In consequence thereof injury has been and is now being done by respondents to competition

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

CONCLUSION

The aforesaid acts and practices of the respondents, 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 of the Commission, the answers of respondents, Marlborough Sales Co., Inc., a corporation; Madison Sales Corporation, a corporation; Windsor Manufacturing Co., Inc., a corporation; William Zeffert, individually and as managing head of said corporations; and Atlantic Manufacturing Co., a corporation; and Henry Braun, Charles Kleinbeck, and Caesar Muzzi, individually and as officers of Atlantic Manufacturing Co., testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before John L. Hornor and Lewis C. Russell, examiners of the Commission, theretofore duly designated by it, and upon brief filed herein 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 the respondents, Marlborough Sales Co., Inc., a corporation; Madison Sales Corporation, a corporation; Windsor Manufacturing Co., Inc., a corporation; and William Zeffert, individually and as an officer and directing manager of said corporations, and their respective agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of cosmetics, tooth pastes, and shaving creams, or other toilet articles, in commerce between and among the various States of the United States and in the District of Columbia, do forthwith cease and desist from:

1. Representing, 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, and intended to be offered for sale and sold.

2. Designating, by marking or otherwise, its products by name or phrases simulating the name or phrases by which similar products of a competitor are designated, or selling or offering for sale its products packed in containers or wrappers simulating the containers or wrappers used by a competitor for similar products.

3. So packaging their products, through the device of slack-filling or otherwise, that the ordinary-sized units appear to be of "giant size" or that the quantity contained in such package appears to be greater than is actually contained therein.

4. Representing that any of the said products are compounded under the supervision of a doctor or dentist or one possessing special knowledge of dental hygiene and pharmacology, when such is not the case.

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

It is further ordered, That as to Marlborough Laboratories, Inc., Atlantic Manufacturing Co., and Henry Braun, Charles Kleinbeck, Caesar Muzzi, Harry Silverstein, David Kamerman, and Frances Chorba, the complaint here be, and the same hereby is, dismissed.

IN THE MATTER OF

ERIE LABORATORIES, INC., ALSO TRADING AS MACK PHARMACAL COMPANY, ALLIED PHARMACAL CO., ALSO TRADING AS ERIE LABORATORIES, INC., AND MELVIN ROSE, DAVID F. BERLAND AND ROSE KOTENBERG

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

Docket 4382. Complaint, Nov. 20, 1940—Decision, Mar. 21, 1941

Where two corporations and three individuals, who directed and controlled their practices and methods of advertising, engaged in interstate sale and distribution of various medicinal preparations, including their "Mrs. Bee Femo Caps," "Femo Caps," and "Bee Caps," and acting in conjunction and cooperation with each other in carrying on acts and practices below set forth; by advertisements of their said last-named preparations disseminated through the mails, newspaper advertisements, circulars, and other advertising literature in commerce and otherwise—

(*a*) Represented, directly and by implication, that their said preparations constituted a competent and effective treatment for delayed, unnatural, and suppressed menstruation, and were safe and harmless, facts being they were not competent and effective treatments for said condition, and were not safe and harmless in that they contained certain drugs in quantities sufficient to cause serious and irreparable injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual and, thus used, might result in gastro-intestinal disturbance and excessive congestion and hemorrhage of the pelvic organs and, in case of pregnancy, might cause uterine infection and blood poisoning or other serious injury; and

(*b*) Failed to reveal facts material in the light of the representations contained in said advertisements, and that use thereof under conditions prescribed therein or under such conditions as are customary or usual, might cause the dangerous conditions noted above;

With capacity and tendency, through use of such false, misleading, and deceptive representations, to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that their said preparations possessed properties which they did not in fact possess, and that they were in all cases safe and harmless, and with result, because of such mistaken belief, of inducing such public to purchase substantial quantities 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. William L. Taggart for the Commission.

Mr. A. L. Greenspun, of Cleveland, Ohio, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Erie Laboratories, Inc., a corporation, also trading as Mack Pharmacal Co.; Allied Pharmacal Co., a corporation, also trading as Erie Laboratories, Inc.; and Melvin Rose, David F. Berland, and Rose Kotenberg, individually, and as officers and directors of Allied Pharmacal Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Erie Laboratories, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its principal office and principal place of business in Suite 530 Film Exchange Building, 2108 Payne Avenue, Cleveland, Ohio. Mack Pharmacal Co. is a trade name used by the said Erie Laboratories, Inc., in selling its products to retail dealers. Allied Pharmacal Co. is a corporation organized and existing under the laws of the State of Ohio, with its principal office and principal place of business in Suite 530 Film Exchange Building, 2108 Payne Avenue, Cleveland, Ohio. Respondent, Allied Pharmacal Co., also does business under the name of Erie Laboratories, Inc. Melvin Rose is an individual engaged in business both individually and as vice president, treasurer, and a director of the Allied Pharmacal Co., and David F. Berland and Rose Kotenberg, individuals, are likewise officers and directors of said Allied Pharmacal Co. Said individual respondents are also officers and directors of Erie Laboratories, Inc.

Respondents, Melvin Rose, David F. Berland, and Rose Kotenberg, direct and control the practices and methods of advertising of respondents Erie Laboratories, Inc., also trading as Mack Pharmacal Co., and Allied Pharmacal Co., also trading as Erie Laboratories, Inc. The individual respondents have acted in conjunction and cooperation with each other and with the corporate respondents in carrying on the acts and practices hereinafter alleged.

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 are drug preparations advertised and sold respectively as "Mrs. Bee Femo Caps," "Femo Caps," and "Bee Caps."

Respondents cause said preparations, when sold, to be transported from their places of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in its said preparations 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 businesses, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said products by the United States mail and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly the purchase of 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 by circulars and other advertising literature, are the following:

MODERN WOMEN!

Be Safe! Use a guaranteed harmless prescription. Don't be alarmed or disturbed over delayed, unnatural, suppressed periods. A new discovery, Mrs. Bee-Femo-Caps, the fast acting safe aid to women. Acts without discomfort or inconvenience. Even in obstinate cases. Be safe—ask TODAY for Mrs. Bee Femo-Caps. * * *

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondents represent and have represented, directly and by implication, that their preparations designated as "Mrs. Bee Femo Caps," "Femo Caps," and "Bee Caps" constitute a competent and effective treatment for delayed, unnatural and suppressed menstruation and that said preparations are safe and harmless.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' preparations are not competent and effective treatments for delayed, unnatural, and suppressed menstruation. Moreover, said preparations

are not safe and harmless in that they contain the drugs ergot, oil of savin, aloin, and hellebore, in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said preparations may result in gastrointestinal disturbances, catharsis, nausea and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparations are 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 preparations may also produce a severe circulatory condition by the congestion of the blood vessels, and 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. Furthermore, the advertisements disseminated by the respondents, constitute false advertisements for the further 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 preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual, 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.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their 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 respondents' preparations possess properties which they do not in fact possess, and that said preparations are in all cases safe and harmless, when such is not the fact. As a result of such erroneous and mistaken belief the purchasing public has been induced to purchase and has purchased substantial quantities of respondents' preparations.

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 November 20, 1940, issued, and on November 22, 1940, served, its complaint in this proceeding upon the respondents, Erie Laboratories, Inc., also trading as Mack Pharmacal Co., Allied Pharmacal Co., also trading as Erie Laboratories, Inc., and Melvin Rose, David F. Berland, and Rose Kotenberg, 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 and service of said complaint and filing of respondents' answers, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answers and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, and 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, Erie Laboratories, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its principal office and principal place of business in Suite 530, Film Exchange Building, 2108 Payne Avenue, Cleveland, Ohio. Mack Pharmacal Co. is a trade name used by the said Erie Laboratories, Inc., in selling its products to retail dealers. Allied Pharmacal Co. is a corporation organized and existing under the laws of the State of Ohio, with its principal office and principal place of business in Suite 530, Film Exchange Building, 2108 Payne Avenue, Cleveland, Ohio. Respondent, Allied Pharmacal Co., also does business under the name of Erie Laboratories, Inc. Melvin Rose is an individual engaged in business both individually and as vice president, treasurer, and a director of the Allied Pharmacal Co., and

David F. Berland and Rose Kotenberg, individuals, are likewise officers and directors of said Allied Pharmacal Co. Said individual respondents are also officers and directors of Erie Laboratories, Inc.

Respondents, Melvin Rose, David F. Berland, and Rose Kotenberg, direct and control the practices and methods of advertising of respondents, Erie Laboratories, Inc., also trading as Mack Pharmacal Co., and Allied Pharmacal Co., also trading as Erie Laboratories, Inc. The individual respondents have acted in conjunction and cooperation with each other and with the corporate respondents in carrying on the acts and practices hereinafter found.

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 are drug preparations advertised and sold respectively as "Mrs. Bee Femo Caps," "Femo Caps," and "Bee Caps."

Respondents cause said preparations, when sold, to be transported from their places of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in its said preparations 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 businesses, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said products by the United States mail and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of 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 by circulars and other advertising literature, are the following:

MODERN WOMEN!

Be Safe! Use a guaranteed harmless prescription. Don't be alarmed or disturbed over delayed, unnatural, suppressed periods. A new discovery, Mrs.

Bee-Femo-Caps, the fast acting safe aid to women. Acts without discomfort or inconvenience. Even in obstinate cases. Be safe—ask TODAY for Mrs. Bee Femo-Caps. * * *

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondents represent and have represented, directly and by implication, that their preparations designated as "Mrs. Bee Femo Caps," "Femo Caps," and "Bee Caps" constitute a competent and effective treatment for delayed, unnatural and suppressed menstruation that said preparations are safe and harmless.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparations are not competent and effective treatments for delayed, unnatural and suppressed menstruation. Moreover, said preparations are not safe and harmless in that they contain the drugs ergot, oil of savin, aloin, and hellebore, in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said preparations may result in gastrointestinal disturbances, catharsis, nausea and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparations are 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 preparations may also produce a severe circulatory condition by the congestion of the blood vessels, and 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. The advertisements disseminated by the respondents constitute false advertisements for the further 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 preparations under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, 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.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their 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 respondents' preparations possess properties which they do not in fact possess, and that said preparations are in all cases safe and harmless, when such is not the fact. A a result of such erroneous and mistaken belief the purchasing public has been induced to purchase and has purchased substantial quantities of respondents' 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 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, Erie Laboratories, Inc., also trading as Mack Pharmacal Co.; Allied Pharmacal Co., a corporation, also trading as Erie Laboratories, Inc., and Melvin Rose, David F. Berland, and Rose Kotenberg, individually and as officers and directors of Allied Pharmacal Co., their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their medicinal preparation known as "Mrs. Bee Femo Caps," and as "Femo Caps," and "Bee Caps," or any preparation of substantially similar composition or possessing 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 advertisement represents, directly or through inference, that said preparation constitutes a competent or effective treatment for delayed, unnatural or suppressed menstruation; that said preparation is safe or harmless, or which advertisement fails to reveal that the use of said preparation may cause gastrointestinal 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 gastrointestinal 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 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

TRUDEAU 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 4376. Complaint, Nov. 14, 1940—Decision, Mar. 22, 1941

Where a corporation engaged in manufacture of candy and in interstate sale and distribution of various 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, as typical, 60 bars of candy, with push card for use in sale and distribution thereof under a plan by which purchaser paid 1, 2, 3, 4, or 5 cents for bar, in accordance with number selected by chance from disks thereon—

Sold such assortments, together with said push cards, to wholesalers, jobbers and retailers by whom, as direct and indirect purchasers, they 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 its products in accordance with plan involving game of 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 criminal laws, and in competition with many who, unwilling to use said or any method involving game of chance or any other method contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales plan or method and by element of chance involved therein, and were thereby induced to buy and sell its said candy in preference to that of competitors aforesaid who do not use same or equivalent methods, and with tendency and capacity to unfairly divert trade in commerce to it from its said competitors:

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

Before *Mr. W. W. Sheppard*, 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 Trudeau 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 interest

of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Trudeau Candies, Inc., is a corporation organized and existing under the laws of the State of Minnesota, with its principal office and place of business located at 287 East Sixth Street, St. Paul, Minn. 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 St. Paul, Minn., to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now, and for more than 1 year last past has been, a course of trade by respondent in 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 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 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 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 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 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.

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 November 14, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Trudeau Candies, Inc., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 10, 1941, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent Trudeau Candies, Inc., is a corporation organized and existing under the laws of the State of Minnesota, with its principal office and place of business located at 287 East Sixth Street, St. Paul, Minn. 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 St. Paul, Minn., to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now, and for more than 1 year last past has been, a course of trade by respondent in 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 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 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 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 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, Trudeau 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. Supplying to or placing in the hands of others candy or any 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 public.

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 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

CLARO LABORATORIES, INC., AND JOSEPH FERDINAND CLARO PRZYBYSZ, ALSO KNOWN AS JOSEPH FERDINAND CLARO, AND FRANCES PRZYBYSZ

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

Docket 3663. Complaint, Dec. 14, 1938—Decision, Mar. 25, 1941

Where a corporation and two individuals, who owned, operated, and controlled same, engaged in manufacture of their "Claro Hair Remover" liquid preparation and in competitive interstate sale and distribution thereof—

Represented, directly and by implication, that their said product would permanently remove superfluous hair, and that it was safe and non-irritating, through such statements, in publications of general circulation and on counter display cards distributed chiefly to beauty shops, as "Ladies! A New Discovery! Positively banishes unsightly hair on face or body in three or four minutes. * * * nonirritating * * *," etc., and "Banishes Unsightly Hair Claro Liquid Depilatory New—Smart—Safe;"

Facts being said product, by virtue of barium sulphide and potassium hydroxide content, would dissolve that part of hair above the skin with which it came in contact, but would not affect roots thereof nor retard growth or permanently remove superfluous hair, and instead of being safe or non-irritating, would irritate the skin and was likely to cause severe dermatitis and chemical burns;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false advertisements were true, and of thereby inducing it to purchase their said preparation, whereby trade was diverted unfairly to them from competitors who truthfully advertised their respective preparations and effectiveness thereof:

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

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

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 Claro Laboratories, Inc., a corporation, and Joseph Ferdinand Claro Przybysz, also known as Joseph Ferdinand Claro, and Frances Przybysz, individuals, 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. Claro Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, and respondents Joseph Ferdinand Claro Przybysz, also known as Joseph Ferdinand Claro, and Frances Przybysz, individuals, are president and secretary, respectively, thereof. The individual respondents have dominant control of the advertising policies and business activities of said corporate respondent, and all of said respondents have cooperated each with the other and have acted in concert in doing the acts and things alleged hereinafter. Respondents' office and principal place of business is located at 530 West Indiana Avenue, South Bend, Ind.

PAR. 2. Respondents now are, and for more than 1 year last past have been, engaged in the manufacture, sale, and distribution of a certain preparation in liquid form for the removal of surplus hair known as Claro Hair Remover. Respondents cause said product, when sold, to be transported from their place of business in the State of Indiana to purchasers thereof located in other states of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said 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 now, and at all times herein referred to have been, in substantial competition with other corporations and individuals and with partnerships and firms likewise engaged in the sale and distribution in said commerce of similar preparations for the removal of surplus hair. There are among respondents' competitors many who sell and distribute to the purchasing public like depilatory preparations who in no way misrepresent the nature or properties of the respective products sold and distributed by them and their effectiveness when used.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase of said Claro Hair Remover by members of the purchasing public, respondents have caused advertisements to be inserted in magazines and other periodicals in general circulation throughout the United States and have had printed labels, display cards, and other literature with statements therein concerning

the nature and properties of their said product and its effectiveness when used, in or on all of which the name of said corporate respondent has been prominently and conspicuously displayed. This printed literature, together with bottles of said product with said labels thereon, respondents have sent to beauty parlors, drug stores, and other places located in many of said states. Among and typical of the statements made in the aforesaid printed literature, display cards, and other advertisements, are the following:

Positively banishes unsightly hair on face, arms and legs in a few moments * * * It is mild, pleasant * * * LIQUID called "CLARO" * * * Ask for it in beauty shops and drug stores. * * * we guarantee to please you * * * Claro Laboratories.

BANISHES UNSIGHTLY HAIR
CLARO
LIQUID DEPILATORY

CLARO * * * The Perfect HAIR REMOVER * * * Safe * * * Non-Irritating.

PAR. 5. All of said statements in paragraph 4 hereof, together with similar statements appearing in respondents' printed literature, display cards, and other advertisements, purport to be descriptive of respondents' product and of its effectiveness when used. In all of their said printed literature, display cards, and other advertisements, respondents directly or by inference, through the statements or representations herein set out and other statements of similar import and effect, represent that their said product will permanently remove superfluous hair from the human body; that their said product is safe and non-irritating; and that they guarantee their said claims therefor.

PAR. 6. The statements and representations made by the respondents with respect to the nature, properties and effect of said product, when used, are grossly exaggerated, false, and misleading. In truth and in fact, said Claro Hair Remover, when used, will not permanently remove hair from the human body. It is not safe and non-irritating to all persons. Respondents do not guarantee any of the claims they make concerning their said product.

PAR. 7. The true facts are that said product will not permanently remove any hair, but will only remove or destroy existent hair. It will cause the hair thereafter growing out to be more coarse and some authorities state it will cause more hair to grow out. Any chemical depilatory containing a sulphite in sufficient quantity to dissolve and burn hair as does Claro Hair Remover will also irritate

or burn some delicate skins, since both hair and skin are made of practically the same chemical components.

PAR. 8. Each and all of the false and misleading representations and implications made by the respondents in describing their said product and its effectiveness when used, as hereinabove set out, have had and have a tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations and implications are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondents' product, with the result that trade in said commerce has been diverted unfairly to respondents from competitors likewise engaged in the business of selling and distributing similar depilatory products, or other products designed and sold for use in removing surplus hair in said commerce, 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 respondents to competitors in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the 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 December 14, A. D., 1938, issued and subsequently served its complaint in this proceeding upon the respondents, Claro Laboratories, Inc., a corporation, and Joseph Ferdinand Claro Przybysz, also known as Joseph Ferdinand Claro, Frances Przybysz, individuals, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John M. Russell, attorney for the Commission, before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it (no evidence having been 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 be-

fore the Commission on said complaint, the answer thereto, testimony and other evidence (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. Claro Laboratories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its principal place of business located at 530 West Indiana Avenue, South Bend, Ind. The respondents Joseph Ferdinand Claro Przybysz, also known as Joseph Ferdinand Claro, and Frances Przybysz are individuals and own, operate, and control the corporate respondent Claro Laboratories, Inc.

PAR 2. Respondents now are, and for more than 1 year last past have been, engaged in the manufacture, sale, and distribution of a certain preparation in liquid form for the removal of surplus hair known as Claro Hair Remover. Respondents cause said preparation, when sold, to be transported from their place of business in the State of Indiana to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and at all times mentioned herein have been, in substantial competition with other corporations and individuals and with partnerships and firms engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of preparations for the removal of surplus hair. There are among such competitors of the respondents many who sell and distribute to the purchasing public depilatory preparations who in no way misrepresent the nature or properties of the respective preparations sold and distributed by them and their effectiveness when used.

PAR. 4. The Commission finds that in the course and conduct of their business and for the purpose of inducing the purchase of their said preparation, the respondents have caused various statements and

representations relative to said preparation to be inserted in advertisements in publications having a general circulation in the various States of the United States. Among and typical of such statements and representations appearing in such advertisements is the following:

LADIES! A NEW DISCOVERY!

Positively banishes unsightly hair on face or body in three or four minutes. Easily applied. Its mild, pleasant, fragrant and nonirritating LIQUID called "CLARO"—a marvelous product. Leaves skin sweet and clean, satin-smooth, perfectly lovely to touch. Costs only 50¢. Ask for it in beauty shops and drug stores. Or mail 50¢ in coin direct and receive our DeLuxe package postpaid, or send no money; pay postman a few cents postage on arrival.

CLARO LABORATORIES, DEPT. 51,
SOUTH BEND, IND.

In addition to advertisements appearing in various publications, the respondents have also distributed counter display cards to purchasers of their preparation located in various States of the United States, consisting chiefly of beauty shops. Such display cards contain the following representation:

Banishes Unsightly Hair

CLARO

Liquid Depilatory

New—Smart—Safe

PAR. 5. The Commission finds that through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, the respondents represent, directly and by implication, that their preparation, Claro Hair Remover, will permanently remove superfluous hair from the human body and that said preparation is safe and non-irritating.

PAR. 6. The Commission further finds that the foregoing statements and representations made by the respondents with respect to the nature, properties, and effect of said preparation are grossly exaggerated, false and misleading. Respondents' preparation, Claro Hair Remover, is composed of the following ingredients: potassium hydroxide, approximately 1 percent; barium sulphide, 4 percent; strantium sulphide, trace; safrol; and water, approximately 94 percent. By reason of the existence of barium sulphide and potassium hydroxide in respondents' preparation, this preparation will dissolve that portion of the hair above the skin with which it comes in contact but will not affect the roots of the hair or retard the growth of hair and will not permanently remove superfluous hair from the

human body. Respondents' preparation is not safe or non-irritating for the reason that under the conditions of use said preparation will irritate the skin and is likely to cause severe dermatitis and chemical burns.

PAR. 7. The Commission further finds that the use by the respondents 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, representations, and advertisements are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparation. As a direct result, trade has been diverted unfairly to the respondents from competitors engaged in the sale and distribution of depilatory preparations in commerce among and between the various States of the United States who truthfully advertise their respective preparations and the effectiveness thereof when used.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence taken before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the said complaint, and brief in support of the complaint filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Claro Laboratories, Inc., a corporation, and its officers, and Joseph Ferdinand Claro Przybysz, also known as Joseph Ferdinand Claro, Frances Przybysz, individuals, 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 their preparation now known as Claro

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

Representing, directly or by implication, that respondent's preparation constitutes a safe or nonirritating means of removal of superfluous hair from the human body, or that it will permanently remove such hair or retard its growth.

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

ELECTRICAL LABORATORIES 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 3707. Complaint, Feb. 13, 1939—Decision, Mar. 25, 1941

Where a corporation engaged in manufacture of aerial eliminators, antennae, and other electrical and mechanical devices and parts for radio receiving sets, and in competitive interstate sale and distribution thereof—

Made such statements and representations, in advertisements in newspapers, periodicals, and pamphlets circulated throughout the United States, of a device labeled and referred to by it as "Walco Aerial Eliminator" and "Dynamic Antenna," as "Throw Away Your Aerial! Amazing $1 device does away with it Entirely! Special Tuning Feature Improves Selectivity, Tone. * * * Gives volume and distance equal to outdoor aerial with far Better Selectivity. * * * Ends all dangers of lightning, storms, short circuits. No more clicks and noise from wind and rain";

Facts being such device did not improve selectivity and tone of radio sets, or under all circumstances give volume and distance equal to outdoor aerials, did not give better selectivity, dependent in fact, upon design, quality, and other factors, and did not end all dangers of lightning, storms and short circuits, but only to extent that such dangers might be due to maintenance of outdoor aerial, and, further, did not eliminate clicks and noises from wind and rain, except as they might be due to physical movement of outside aerial resulting from wind, rain or other atmospheric disturbances;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all of said representations were true, and result that numerous members of consuming public purchased a substantial volume of its said products, and trade was unfairly diverted to it from competitors selling and distributing similar devices; to their 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 P. Bramhall*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. R. A. McOuat* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Electrical Laboratories Company, 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, Electrical Laboratories 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 49 East Twenty-first Street, New York, N. Y. Said respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of radio receiving sets, antennae, aerial eliminators, and other electrical and mechanical devices and parts for radio receiving sets and similar products and in the distribution thereof. Respondent causes said products, when sold, to be transported from its principal place of business in New York City to purchasers thereof located in the several States of the United States other than the State of origin and in the District of Columbia.

Respondent maintains, and at all times herein mentioned has maintained, a constant course of trade in said products so sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business, respondent is and has been in active and substantial competition with corporations, partnerships, and individuals likewise engaged in the sale and distribution of radio receiving sets, antennae and other electrical and mechanical devices and parts for radio receiving sets and like products.

PAR. 2. In the course and conduct of its said business, respondent, for the purpose of inducing the purchase of its said radio receiving sets, antennae, aerial eliminators, and other electrical and mechanical devices and parts for radio receiving sets, has published and circulated among prospective customers throughout the United States and in the District of Columbia, by mail, newspapers and magazines, pamphlets, circulars, letters and other literature, advertisements containing false and misleading statements and representations. Among such false and misleading statements and representations is a pictorial representation of an electrical and mechanical device labeled "Dynamic Antenna," together with the following statements and representations:

Throw Away Your Aerial!

Amazing $1 Device Does Away With It ENTIRELY! Special Tuning Feature Improves Selectivity, Tone.

Simply hook Walco Aerial Eliminator on back of radio—forget yards and yards of aerial trouble! Size only 3x5 inches. Eliminates ugly wires all over room, on roof, or hanging out window. Gives volume and distance equal to outdoor aerial with far BETTER SELECTIVITY.

No More Nuisance or Danger

Easy to connect Walco Aerial Eliminator, in 2 minutes without tools! Ends all dangers of lightning, storms, short circuits. No more clicks and noise from wind and rain. NOW you can hook up radio in any room. No wires show.

Send No Money

Try it 5 Days at Our Risk!

Merely mail the coupon. No money necessary now. When delivered pay postman $1, plus few cents postage. If not delighted, return it in 5 days—your $1 refunded at once.

ELECTRICAL LABORATCRIES Co., Dept. 2212, 49 East 21st St., New York City.

The aforesaid statements and representations, together with other statements and representations not herein set out, serve as representations on the part of the respondent that the "Walco Aerial Eliminator" and the "Dynamic Antenna" improve selectivity and tone, remove electrical disturbances, give volume and distance equal to outdoor aerial with better selectivity and remove all nuisance and danger of lightning, storms, and short circuits, and that respondent owns, operates, or controls a laboratory or factory where said products are designed, made, or tested. A substantial part of the public are of the belief that an advantage is to be obtained by purchasing directly from the manufacturer or designer without the intervention of a middleman.

PAR. 3. In truth and in fact, respondent does not own, maintain, operate, or control a laboratory or factory in which any of its said products are designed, manufactured or tested. Respondent's said "Walco Aerial Eliminator" and "Dynamic Antenna" do not improve selectivity and tone, remove electrical disturbances, give volume and distance equal to outdoor aerial with better selectivity, or remove all nuisance and danger of lightning, storms and short circuits.

PAR. 4. There are among respondent's competitors many who sell and distribute radio receiving sets, aerials, antennae, and other electrical and mechanical devices for radio receiving sets, who do not in any manner misrepresent their products and who do not represent that they design, manufacture or test the products sold and distributed by them, when such is not a fact.

PAR. 5. Each and all of the false and misleading statements and representations made by the respondent, as hereinabove set-out, 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 all of said representations are true. As a result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's said products with the result that trade has been diverted unfairly to respondent from competitors engaged in the business of selling and distributing radio receiving sets, devices for radio receiving sets and like products, who do not misrepresent the source, quality, nature and capacity of their said products. As a result thereof, injury has been done, and is now being done, by respondent to its competitors in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 13, 1939, issued and subsequently served its complaint in this proceeding upon respondent, Electrical Laboratories Company, 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. Testimony and other evidence in support of the allegations of said complaint were introduced by Carrel F. Rhodes and R. A. McOuat, attorneys for the Commission, before 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 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 answer or 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, Electrical Laboratories Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business and offices at 49 East Twenty-first Street, New York, N. Y. Said respondent was at all times mentioned in the complaint engaged in the manufacture, sale, and distribution of aerial eliminators, antennae, and other electrical and mechanical devices and parts for radio receiving sets.

PAR. 2. Respondent caused said products, when sold, to be transported from its principal place of business in New York, N. Y., to purchasers located in the several States of the United States and in the District of Columbia, and maintained at all times herein mentioned a constant course of trade and commerce in said products sold and distributed by it between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business respondent, for the purpose of inducing the purchase of its aerial eliminators, antennae, and other electrical and mechanical devices and parts for radio receiving sets, advertises said devices in newspapers, magazines, and pamphlets circulated among prospective customers throughout the United States. Such advertisements contain various statements and representations with respect to a device labeled and referred to in said advertisements as "Walco Aerial Eliminator" and as "Dynamic Antenna," such as:

THROW AWAY YOUR AERIAL!

Amazing $1 device does away with it ENTIRELY! Special Tuning Feature Improves Selectivity, Tone. * * * Gives volume and distance equal to outdoor aerial with far BETTER SELECTIVITY. * * * Ends all dangers of lightning, storms, short circuits. No more clicks and noise from wind and rain.

PAR. 4. In truth and in fact respondent's said "Walco Aerial Eliminator" or "Dynamic Antenna" does not improve the selectivity and tone of radio receiving sets and does not under all conditions give volume and distance equal to outdoor aerials, with better selectivity. Selectivity of receiving sets is dependent upon the design of the receiver, quality of materials, excellence of workmanship, and other factors, and is not improved by the use of respondent's device in lieu of an outdoor aerial. Said "Walco Aerial Eliminator" or "Dynamic Antenna" does not end all dangers of lightning, storms, and short circuits, but only to the extent that these dangers may be due to the maintenance of an outside aerial. Said "Walco Aerial Eliminator" or

"Dynamic Antenna" does not eliminate clicks and noises from wind and rain except insofar as they may be due to physical movement of an outside aerial resulting from wind, rain, or other atmospheric disturbance.

PAR. 5. There are among respondent's competitors many who sell and distribute in commerce throughout the United States antennae and other electrical and mechanical devices for radio receiving sets intended to serve the same or similar purposes for which respondent advertises its products and with whom the respondent is engaged in active and substantial competition.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent as hereinabove set out 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 all of said representations are true. As a result of this erroneous and mistaken belief numerous members of the consuming public have purchased a substantial volume of respondent's said products, with the result that trade has been unfairly diverted to respondent from competitors engaged in the business of selling and distributing similar devices for use with radio receiving sets. As a result thereof injury has been done, and is now being done, by respondent to its competitors in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent 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, testimony and other evidence in support of the allegations of said complaint taken before John P. Bramhall, an examiner of the Commission, therefore duly designated by it, brief filed by Carrel F. Rhodes, counsel for the Commission (respondent having failed to file any answer or brief 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 respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Electrical Laboratories Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its radio receiving set accessory now known as and sold under the name "Walco Aerial Eliminator" or "Dynamic Antenna," or any similar device having substantially the same utility, do forthwith cease and desist from:

1. Representing that such device improves the selectivity and tone of radio receiving sets and gives volume and distance equal to outdoor aerials, with better selectivity.

2. Representing that such device ends all dangers of lightning, storms, and short circuits, except insofar as these dangers may be due to the maintenance of an outside aerial.

3. Representing that such device eliminates clicks and noises from wind and rain, except insofar as these may be due to the physical movement of an outside aerial resulting from such causes.

It is further ordered, That 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

DAVID H. GOLDMAN, TRADING AS ZEEN 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 3995. Complaint, Jan. 22, 1940—Decision, Mar. 26, 1941

Where an individual engaged in compounding, and in interstate sale and distribution of, his "Zeen Dry Cleaner" for cleaning clothing, upholstered furniture, carpets, rugs, blankets, draperies, and woolen and other materials, and for protection of such articles also from ravages of moths—

(*a*) Represented, in labels affixed to containers thereof, and in printed matter distributed among the trade and public, that his said cleaner would "mothproof or de-moth woolen materials in upholstery or rugs with one operation";

Facts being said product did not reach deep-seated infestations of moths, unless used according to complete and specific instructions for such purpose, cleans and removes dirt * * * spots and stains from all fabrics and, while it possessed moth-repellent properties, such properties, due to evaporation, were gradually diminished and lost unless repeated applications were made at proper intervals; and

(*b*) Represented to trade and public that said preparation "* * * dry cleans and removes dirt * * * spots and stains from all fabrics * * * cleans and removes all foreign matter," "is nonexplosive, as rubbing cannot ignite it," and "is used exclusively by leading furniture and department stores everywhere";

Facts being it would not remove certain types of spots and stains from fabrics, and was made of petroleum distillates which vaporize to form gas capable of causing explosion if exposed to fire or flame, and the claim of exclusive use thereof by "leading furniture and department stores everywhere" was misleading, since said product was sold in not more than five or six States;

With capacity and tendency to deceive and mislead manufacturers of fabrics, dealers therein, and members of the public into the erroneous and mistaken belief that his said representations were truthful and thereby to induce purchase of his 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. Joseph C. Fehr for the Commission.

Mr. H. K. Bell, of Spieth, Taggart, Spring & Annat, of Cleveland, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that David H. Goldman, an individual trading as Zeen Chemical 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. David H. Goldman, hereinafter referred to as respondent, is an individual, trading as Zeen Chemical Co., having his principal office and place of business located at 1311 West Eleventh Street in the city of Cleveland, State of Ohio. Respondent is now, and for several years last past has been, engaged in the business of compounding chemical specialties, including a liquid solution designated as "Zeen Dry Cleaner" for spraying on clothing, upholstered furniture, carpets, rugs, blankets, draperies, and woolen and other materials. Said preparation, besides being intended to be used for the dry cleaning of various fabrics as aforesaid, is also designed to protect such articles from the ravages of 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 his said liquid product "Zeen Dry Cleaner" to purchasers located in various States of the United States other than the State of Ohio. The respondent has caused said "Zeen Dry Cleaner," when so sold by him, to be transported from his plant or place of business in Ohio 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 the District of Columbia.

PAR. 3. In the course and conduct of his business as above set forth, the respondent, during all the times above mentioned and referred to, has caused and now causes advertisements pertaining to his product, "Zeen Dry Cleaner," to be published on labels affixed to the can containers of said product and in folders and 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 represents that his aforesaid product, "Zeen Dry Cleaner," "will moth-proof or de-moth woolen materials in upholstery or rugs with one operation."

Respondent's product, "Zeen Dry Cleaner," does not, when used as directed, reach deep-seated infestations of moths. It will not moth-proof fabrics, but after a short period due to evaporation it loses any moth-repellant properties it may have.

PAR. 4. The respondent makes and has made to the trade and to the public other unfair, misleading, and deceptive statements and representations with reference to the value and merits of his aforesaid product, typical of which are as follows:

> Zeen dry cleans and removes dirt * * * spots and stains from all fabrics * * * cleans and removes all foreign matter.
>
> Zeen is non-explosive, as rubbing cannot ignite it.
>
> Zeen Dry Cleaner is used exclusively by leading furniture and department stores everywhere.

The aforesaid statements and representations of the respondent are false and misleading. In truth and in fact, "Zeen Dry Cleaner" will not remove certain types of spots and stains from fabrics treated by it. Said product is made of petroleum distillates, which vaporize and mix with the air to form an explosive gas, potentially capable of causing an explosion. Further, the claim of exclusive use of said product by "leading furniture and department stores everywhere" is false and misleading, as the respondent sells said product in not exceeding five or six States.

PAR. 5. The statements and representations made by the respondent in his advertisements as above set forth have had, and now have, the capacity and tendency to deceive and mislead manufacturers of fabrics, dealers therein, and members of the public 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 to induce the purchase of respondent's "Zeen Dry Cleaner," in reliance upon such 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 22d day of January 1940, issued and served its complaint in this proceeding upon respondent, David H. Goldman, an individual, trading as Zeen Chemical Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On Febru-

ary 12, 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 for the respondent by its counsel, H. K. Bell, Esq., 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. David H. Goldman, hereinafter referred to as respondent, is an individual, trading as Zeen Chemical Co., having his principal office and place of business located at 1311 West Eleventh Street, in the city of Cleveland, State of Ohio. Respondent is now, and for several years last past has been, engaged in the business of compounding chemical specialties, including a liquid solution designated as "Zeen Dry Cleaner" for cleaning clothing, upholstered furniture, carpets, rugs, blankets, draperies, and woolen and other materials. Said preparation, besides being intended to be used for the dry cleaning of various fabrics as aforesaid, is also designed to protect such articles from the ravages of 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 his said liquid product, "Zeen Dry Cleaner," to purchasers located in various States of the United States other than the State of Ohio. The respondent has caused said "Zeen Dry Cleaner," when so sold by him, to be transported from his plant or place of business in Ohio 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 the District of Columbia.

PAR. 3. Prior to the issuance of the complaint herein, in the course and conduct of his business as above set forth, the respondent has caused advertisements pertaining to his product, "Zeen Dry Cleaner," to be published on labels affixed to the can containers of said product and in folders and 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 represented that his aforesaid product, "Zeen Dry Cleaner," "Will moth-proof or de-moth woolen materials in upholstery or rugs with one operation."

Respondent's product, "Zeen Dry Cleaner," does not reach deep-seated infestations of moths, unless used according to complete and specific directions for such purpose, which directions were not provided. Such preparation will not mothproof fabrics. While it possesses moth-repellant properties, these properties, due to evaporation, are gradually diminished and then lost unless repeated applications are made. One application of the product will do no more than temporarily repel moths. Such repellant properties as it possesses are retained in fabrics treated therewith only when repeated applications are made at proper intervals.

PAR. 4. Prior to the issuance of the complaint herein the respondent also made to the trade and to the public the following statements and representations with reference to the value and merits of his aforesaid product:

> Zeen dry cleans and removes dirt * * * spots and stains from all fabrics * * * cleans and removes all foreign matter.
>
> Zeen is non-explosive, as rubbing cannot ignite it.
>
> Zeen Dry Cleaner is used exclusively by leading furniture and department stores everywhere.

In truth and in fact, "Zeen Dry Cleaner" will not remove certain types of spots and stains from fabrics treated with it. Said product is made of petroleum distillates which vaporize and mix to form a gas capable of causing an explosion if exposed to fire or flame. Further, the claim of exclusive use of said product by "leading furniture and department stores everywhere" is misleading, as the respondent sells said product in not exceeding five or six States.

PAR. 5. The statements and representations made by the respondent in his advertisements as above set forth have had the capacity and tendency to deceive and mislead manufacturers of fabrics, dealers therein, and members of the public into the erroneous and mistaken belief that said statements and representations so made by the repondent were and are truthful and to induce the purchase of respondent's "Zeen Dry Cleaner" in reliance upon such belief.

CONCLUSION

The aforesaid acts and practices of respondent, David H. Goldman, an individual, trading as Zeen Chemical Co., 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 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, David H. Goldman, an individual trading as Zeen Chemical Co., his representatives, servants, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his product, "Zeen Dry Cleaner," under that or any other name or designation, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, through circulars, catalogs, labels or in any other form of printed matter, or in any other way:

1. That Zeen Dry Cleaner will reach deep-seated infestations of moths, unless directions accompany such representation which will enable the user to bring the preparation in contact with the moths.

2. That Zeen Dry Cleaner will mothproof fabrics or materials.

3. That Zeen Dry Cleaner will demoth materials in upholstery or rugs, unless such representations be accompanied by the explanation that such result is of temporary duration only and must be repeated at proper intervals.

4. That Zeen Dry Cleaner cleans and removes all types of spots, stains, and all foreign matter.

5. That Zeen Dry Cleaner is nonexplosive, except that respondent is not hereby prohibited from representing that Zeen Dry Cleaner is nonexplosive if kept away from fire or flame.

6. That Zeen Dry Cleaner is used exclusively by leading furniture and department stores everywhere.

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

AIR CONDITIONING TRAINING CORPORATION, AND BENJAMIN M. KLEKNER, MORRIS A. GLUCK AND LEON J. KNIGHT

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

Docket 4182. Complaint, July 12, 1940—Decision, Mar. 27, 1941

Where a corporation and three individuals, who were general officers thereof and formed, controlled, and directed its policies, acts, and practices, engaged in interstate sale and distribution of courses of study and instruction in air conditioning and refrigeration, together with books and material connected therewith, and one of the most extensive radio advertisers in the United States, in correspondence school field;

In advertising and soliciting the sale of and selling its said courses through radio continuities broadcast over more than 75 stations having interstate reception, under plan or practice by which it referred to a force of some 150 salesmen, operating out of 4 or 5 district offices, names of prospects who responded to its broadcasts, for solicitation in endeavor to sell their said course, with aid of much descriptive advertising literature; in its said broadcasts, advertising literature and particularly through its salesmen—

(*a*) Represented that students who completed its courses were assured of employment in the industry involved, that jobs were guaranteed and promised, that they would secure students such employment, that there were vacancies in the industry in large numbers which were available to its said students, and that there was a great and unusual demand for men to fill the same;

Facts being, with very rare exceptions, students who completed their training were unable to find employment in the industry, members of which prefer graduates of universities with engineering degrees for installation of commercial equipment, while in field of service work supply of available men was generally much greater than demand, with men trained in the plumbing, electric and pipe-fitting trades generally available and preferred to correspondence school graduates, additional difficulties to whose employment were interposed in many of the larger centers by union regulations, and, contrary to above representations, it neither had nor succeeded in securing jobs for graduates, and opportunities in service field were being restricted rather than expanded by mechanical progress and prevailing practice;

(*b*) Represented that the industry had designated school in question to train men for employment therein, that it was sponsoring such training and cooperating, and that members had arrangements with it for employing students who finished such training; and

(*c*) Represented that courses were formed and framed by representatives of the industry who actively participated in the conduct of the school, and that their salesmen were "vocational directors" or experts in vocational guidance, engaged in selecting men of special qualifications for training;

Facts being that while up to 1939, it featured an advisory board of executives of prominent manufacturers of air conditioning equipment, the board was used as an advertising feature, and it did not appear that it ever served any purpose or functioned in any manner; no members of industry actively cooperated in any manner in forming course of instruction, but merely supplied certain data; there was no connection between the school and the industry, but former was a purely private commercial undertaking; and said salesmen were not "vocational directors," etc., engaged as above set forth, but merely called upon all prospects and endeavored to secure contracts of sale from virtually all who could be induced to make a down payment;

(*d*) Represented in virtually all cases, that a job at the conclusion of the training period was certain, and, in some instances, considerably exaggerated amount of wages to be earned, and represented that students, would be able to secure part-time work in servicing domestic refrigeration equipment while pursuing the course, and solicited and advisedly enrolled those with only limited education or without sufficient mechanical experience to comprehend course in question; notwithstanding that students were neither able nor qualified to secure such part-time work, and wages that graduates might receive were grossly exaggerated in that wage scale for trained men in the industry was not applicable to said graduates who had had no practical experience;

(*e*) Represented, through its said salesmen, and contrary to contract provisions, that payment of the tuition fee could be made in small monthly installments, or be deferred until the student had obtained work in the industry, or had taken the laboratory training which they included and emphasized in their radio advertising, and for which there were no additional charges, and that if prospects found they were unable to continue, they could drop course at any time; and deceptively prevented reading of the contract, which eventually set forth provisions that additional fee was required for said laboratory training, that payment of tuition must be completed before student could enter laboratory, that school did not guarantee employment, and various other provisions of which prospect was not aware until he received copy of contract, which school considered unbreakable and, in many instances, brought suit to collect tuition fees of students who might never have taken more than one or two lessons or even returned all material without attempting to study course; and

(*f*) Made representations with respect to the size, equipment, and facilities of their laboratory which were grossly exaggerated;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers of said courses of study and instruction into the erroneous and mistaken belief that such representations were true, and to induce them to purchase and pursue such courses on account 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.

Before *Mr. John W. Addison*, *Mr. Lewis C. Russell*, and *Mr. William C. Reeves*, trial examiners.

Mr. William L. Pencke for the Commission.

Mr. T. B. Knight, of Youngstown, Ohio, and *Kirkland Fleming, Green, Martin & Ellis*, 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 Air Conditioning Training Corporation, a corporation, and Benjamin M. Klekner, Morris A. Gluck, and Leon J. Knight, individually, and as officers of Air Conditioning Training 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, Air Conditioning Training Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business at 789 Wick Avenue, in the city of Youngstown, State of Ohio.

Respondents, Benjamin M. Klekner, Morris A. Gluck, and Leon J. Knight are president, vice president, and secretary-treasurer, respectively, of the respondent corporation, and as officers of said corporation, have their principal place of business and office at the aforesaid address of the respondent corporation, and they formulate, control, and direct the policies and practices of said respondent corporation.

PAR. 2. Respondent, Air Conditioning Training Corporation, is now, and has been for more than 2 years last past, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction in the subjects of air conditioning and refrigeration, which said courses of study and instruction are pursued by correspondence through the medium of the United States mail. Said corporate respondent, in the course and conduct of said business during the time aforesaid caused and does now cause its said courses of study and instruction, together with books and material connected therewith to be transported from its said place of business in Ohio to, into and through States of the United States other than Ohio to the purchasers thereof in such other States.

PAR. 3. Said corporate respondent, in soliciting the sale of and in selling its said courses of study and instruction, has made numerous misleading representations by one or more of the following methods, to wit: through its representatives engaged in soliciting the sale of such courses; in advertising matter and printed matter circulated or caused

to be circulated by said respondent by mail or otherwise to prospective students, enrolled students or to members of the public generally in various States of the United States; and in radio broadcasts to members of the general public, including prospective students. Among such misleading representations made by or through one or more of the said methods are representations that import or imply:

1. That students who complete said respondent's training are assured of employment in the air conditioning and refrigerating industry or that such jobs are guaranteed or promised or that they are certain to be secured.

2. That said respondent will secure employment for students who complete its training.

3. That said respondent's training is given in cooperation with the air conditioning and refrigeration industry or that said industry has designated said respondent to train men for employment therein or that such training is sponsored or given by the said industry or otherwise connected therewith, and that the members thereof will furnish employment to students who finish the same.

4. That the air conditioning and refrigeration industry is in need of men not available through usual channels; that vacancies in large number exist in said industry that are available to said respondent's students who complete its training; and that there is a great and unusual demand for men for jobs in said industry.

5. That representatives of the air conditioning and refrigeration industry formulated or assisted in the formulation of the course of study offered and actively participate in the conduct of the school and in the giving of instruction.

6. That said respondent's salesmen designated as "vocational directors" are experts in vocational guidance and that they are engaged in making selection of men of special qualifications for training for specific employment.

7. That students while pursuing said course will be able to secure part time work in servicing air conditioning and refrigeration equipment and that they will be qualified for such work.

8. That beginning wages in said industry are greater than they are in fact.

9. That persons solicited having only limited education or other insufficient background are qualified to pursue the course of instruction offered and to fill positions in said industry.

10. That the amount to be paid for the course is less than that provided in said respondent's contracts.

11. That there are no fees or payments other than the stated tuition cost.

12. That laboratory or shop training may be taken as soon as the student completes and passes the correspondence course without advance settlement of payments subsequently due.

13. That the laboratory or shop equipment is of greater extent and more comprehensive than it is in fact.

PAR. 4. Among the statements of said corporate respondent in its radio broadcasts, advertising matter or literature circulated among the general public as described in the preceding paragraph, which import or imply one or more of the foregoing representations or which form a background for and encourage such representations by its agents and representatives, are the following:

The Air Conditioning Training Corporation offers a plan written through the cooperation of more than 60 leading producers * * * And listen to this—after you have completed your spare-time training you will then be given the opportunity to spend a period of two weeks at the Training Corporation's shop and laboratory and no matter where you live in the United States, traveling expenses which include a round trip to and from the shop, your room and board during the two weeks' stay at the shop are all a part of this great plan * * * when you have completed your training you will be entitled to receive the full benefits of the Employment Service Department.

* * * I'm going to tell you how you may become engaged in today's most rapid growing industry * * *

* * * Opportunity is knocking at your door right now. Opportunity in the field of air conditioning * * * there are literally hundreds of positions opening up for ambitious mechanically-minded men.

The business of air conditioning and refrigeration is constantly making new jobs for thousands of workers.

Through specialized training in this particular industry unskilled workers have risen to splendid positions of responsibility.

Within the next few years it will offer openings to several thousands of our ablest men.

A. C. T. C. graduates are "properly trained"—as the industry wants them trained * * *

Naturally, a new industry growing so fast, has, as one of its major problems, the scarcity of "properly trained" men. Thousands of new jobs are being created and thousands of men will be needed to fill these jobs. More men must be found who can be trained to do the fascinating phases of the work involved.

Only a short time ago a comparatively few men were employed in Air Conditioning and Refrigeration. Now thousands of men are working in this field and thousands upon thousands more will be employed in the future years to come. Lack of trained and competent men makes it easy for you to go right out, in your own neighborhood and solicit service work, soon after you begin this training, that should pay you $5, $10, and up to as much as $15 a week, in your spare time.

Here's how you may qualify for the mechanical work of repairing, servicing and installing the millions of units now in use and being bought every day * * * * * * Simply address a post card or a letter to Training Corporation in care of Station ——— and you will receive immediately full details on how to get started in this fascinating business the spare time way with training given by the Air Conditioning Training Corporation to help you succeed * * *

and many other representations of like tenor and effect or which carry implications of the nature set forth in the various misleading representations described in the preceding paragraph of this complaint.

PAR. 5. In truth and in fact students who complete said training are not assured of employment in the air conditioning and refrigeration industry, jobs are not certain to be obtained nor are they secured for such students by said corporate respondent. Only a very few of those finishing said training have secured positions in said industry. Said training is not given in cooperation with the air conditioning and refrigeration industry nor has said industry designated said corporate respondent to train men for employment therein. Said training is not sponsored or given by said industry nor is it otherwise connected therewith, but is a purely private commercial undertaking of the said individual respondents operating through said corporate respondent. Members of said industry have not, except in rare instances, furnished employment to students who have finished said training nor have they agreed to do so. The air conditioning and refrigeration industry is not, generally speaking, in need of men not available through usual channels. Most members of the industry train their own men and use a system of promotion for the filling of positions requiring experience and special technical skills. For skilled positions requiring education in the sciences involved in air conditioning and refrigerations, members of the industry secure most of their new employees from recognized engineering schools having resident students and a course of four years leading to a degree in engineering. The training given by said corporate respondent is not of this kind or extent. Vacancies do not exist in large numbers in said industry that are available either to students who complete said training or to others. There is not a great and unusual demand for men for jobs in said industry. Representatives of the air conditioning and refrigeration industry did not formulate or assist in the formulation of said course of study nor have they actively participated in the conduct of the school or in the giving of instruction. The course was formulated, the school is conducted and the instruction given wholly by the officers and employees of said corporate respondent. Said "Vocational Directors" are not experts in vocational guidance nor are they engaged

in selecting men of special qualifications for training for specific employment but are merely salesmen who call upon all prospects available and secure contracts for the course from virtually all who can be induced to sign the same and pay the required down payments. Part time work in servicing air conditioning and refrigeration equipment is not available to students during the time they are pursuing said course nor are such students qualified for such work. Beginning wages in said industry are no higher than in other comparable lines of work. Persons without a high school education or its equivalent or extensive mechanical experience are not qualified to master the subjects necessary to be mastered in order to learn the technical and scientific phases of air conditioning and refrigeration or to successfully pursue said course or fill positions in said industry requiring technical skill and scientific knowledge. Said course is sold for certain definite sums depending upon the mode of payment. Representations by salesmen that less amounts will pay for the course are not in accordance with the facts and are not fulfilled by said corporate respondent. There are in fact additional fees and deposits required other than the stated tuition charge. Students are not entitled to take the laboratory or shop training until the full tuition price has been paid regardless of whether certain payments are not yet due at the time the student finishes the correspondence course. The laboratory or shop equipment of said school is not of the great extent and character, as represented by many of said corporate respondent's salesmen.

PAR. 6. The foregoing acts and practices used by respondents in connection with the offering for sale and sale of said courses of study and instruction 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 and pursue such courses of study and instruction on account thereof.

PAR. 7. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 12, 1940, issued and subsequently served its complaint in this proceeding on the respondents, Air Conditioning Training Corporation, a corporation, and Benjamin M. Klekner, Morris A. Gluck, and Leon J. Knight, individually, and

as officers of Air Conditioning Training Corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the 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. Pencke, attorney for the Commission, before examiners of the Commission theretofore duly designated by it, and said testimony and other evidence, were duly recorded and filed in the office of the Commission, including a stipulation which provides that respondents forego the presentation of evidence in their behalf and waive opportunity to file briefs and present oral argument or further contest the proceedings before the Commission and also waive the report of the trial examiners upon the evidence. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint, the answer 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. Respondent, Air Conditioning Training Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business at 789 Wick Avenue, in the city of Youngstown, State of Ohio.

Respondents, Benjamin M. Klekner, Morris A. Gluck, and Leon J. Knight are president, vice president, and secretary-treasurer, respectively of the respondent corporation, and as officers of said corporation, have their principal place of business and office at the aforesaid address of the respondent corporation, and they formulate, control, and direct the policies and practices of said respondent corporation.

PAR. 2. Respondent, Air Conditioning Training Corporation, is now, and has been for more than 2 years last past, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction in the subjects of air conditioning and refrigeration, which said courses of study and instruction are pursued by correspondence through the medium of the United States mail. Said corporate respondent, in the course and conduct of said business during the time aforesaid caused and does now cause its said courses of study and instruction, together with books and material connected therewith to be transported from its said place

of business in Ohio to, into and through States of the United States other than Ohio to the purchasers thereof in such other States.

PAR. 3. In the correspondence school field the corporate respondent is one of the most extensive radio advertisers in the United States, its radio continuities being broadcast over more than 75 radio stations having interstate reception. Very little use is made of newspaper advertising and direct mail solicitation. The names of prospects who respond to the broadcasts are referred to a force of approximately 150 salesmen operating out of four or five district offices, who solicit these prospects and endeavor to sell the course with the aid of much descriptive advertising literature.

For convenience, the air conditioning and refrigeration industry will hereinafter be referred to as the industry and the corporate respondent, Air Conditioning Training Corporation, will be hereinafter referred to as the respondent or the school.

The respondent, in soliciting the sale of and in selling its said courses of instruction, has made numerous misleading representations in its radio broadcasts, advertising literature, and particularly through its salesmen. These representations, among others, are to the following effect and import:

1. That graduates of respondent's course of training are assured of employment in the air conditioning and refrigeration industry; that jobs are either guaranteed or promised; and that the respondent will secure employment for its graduates.

2. That the industry has designated the respondent to train men for employment in the industry or that it is sponsoring the training or is otherwise cooperating with the school, and that members of the industry will furnish employment to graduates of the school; that representatives of the industry formulated or assisted in the formulation of the course of study and actively participate in the conduct of the school.

3. That vacancies in the industry exist in large numbers and that there is a great and unusual demand for men to fill these vacancies.

4. That the salesmen of the respondent designated as "vocational directors" are experts in vocational guidance and select only men of special qualifications.

5. That students, while pursuing such course, will be able to secure part-time work in servicing domestic refrigeration equipment and that they will be qualified for such work.

6. That beginning wages in the industry are greater than they are in fact.

7. That persons with only a limited education or without sufficient mechanical experience are qualified to comprehend the course of study.

8. That the payment of the tuition fee may be deferred until the student has obtained work in the industry or may be made after the student has taken the laboratory training; and that there are no additional charges to be made at the time of taking the shop training.

9. That the laboratory or shop equipment and teaching facilities are greater than they are in fact.

PAR. 4. Among the statements of said corporate respondent in its radio broadcasts, advertising matter or literature circulated among the general public as described in the preceding paragraph, which import or imply one or more of the foregoing representations or which form a background for and encourage such representations by its agents and representatives, are the following:

The Air Conditioning Training Corporation offers a plan written through the cooperation of more than 60 leading producers * * * And listen to this—after you have completed your spare-time training you will then be given the opportunity to spend a period of two weeks at the Training Corporation's shop and laboratory and no matter where you live in the United States, traveling expenses which include a round trip to and from the shop, your room and board during the two weeks' stay at the shop are all a part of this great plan * * * when you have completed your training you will be entitled to receive the full benefits of the Employment Service Department.

* * * I'm going to tell you how you may become engaged in today's most rapidly growing industry * * *

* * * Opportunity is knocking at your door right now. Opportunity in the field of air conditioning * * * there are literally hundreds of positions opening up for ambitious mechanically-minded men.

The business of air conditioning and refrigeration is constantly making new jobs for thousands of workers.

Through specialized training in this particular industry unskilled workers have risen to splendid positions of responsibility.

Within the next few years it will offer openings to several thousands of our ablest men.

A. C. T. C. graduates are "properly trained"—as the industry wants them trained * * *

Naturally, a new industry growing so fast, has, as one of its major problems, the scarcity of "properly trained" men. Thousands of new jobs are being created and thousands of men will be needed to fill these jobs. More men must be found who can be trained to do the fascinating phases of the work involved.

Only a short time ago a comparatively few men were employed in Air Conditioning and Refrigeration. Now thousands of men are working in this field and thousands upon thousands more will be employed in the future years to come. Lack of trained and competent men makes it easy for you to go right out, in your own neighborhood, and solicit service work, soon after you begin

this training, that should pay you $5, $10, and up to as much as $15 a week, in your spare time.

Here's how you may qualify for the mechanical work of repairing, servicing and installing the millions of units now in use and being bought every day * * *

* * * Simply address a post card or a letter to Training Corporation in care of Station ——— and you will receive immediately full details on how to get started in this fascinating business the spare time way with training given by the Air Conditioning Training Corporation to help you succeed * * *

and many other representations of like tenor and effect or which carry implications of the nature set forth in the various representations described in the preceding paragraph of this findings.

PAR. 5. The evidence shows, and the Commission finds, that with very rare exceptions students who have completed the training are unable to find employment in the industry and that members of the industry refuse to hire such graduates unless they can show substantial practical experience in addition to the training given by respondent. Most manufacturers and many distributors doing installation work of commercial equipment prefer to engage graduates from universities with engineering degrees. In the field of service work the supply of available men is generally much greater than the demand and is filled by men from the regular employment market. Generally, trained men are available from the plumbing, electric, and pipe-fitting trades, and they are preferred to graduates from correspondence schools who have no additional training. Moreover, in many larger centers the union regulations do not permit the hiring of men without experience who have not served their apprenticeship as prescribed by union regulations and who are not members of the union. The respondent does not have jobs available for its graduates. Upon completion of the course the student is requested to furnish the employment department of the school with the names of firms with whom he desires to file his application, and that department thereupon writes letters of recommendation to the firm named by the student. In one instance a student was given the names and addresses of 36 firms, none of which could offer the student a job. In another case a student was given the names of 8 firms and found that at least one of the firms had been out of business for some time and that another consisted of two former graduates of the school, and it was apparent that the lists of prospective employers were made up at random without any indication that they might have work to offer. All of the members of the industry who were called testified that the graduates of correspondence schools were not properly equipped to become competent em-

ployees of the industry, one of them stating that a diploma from a correspondence school would be the poorest recommendation a man could bring.

The annual enrollment is between 10,000 and 12,000 students, and in 1 year less than 70 graduates found employment, and not all of them in the industry, nor does the record show whether any of these 70 obtained their positions through the services of the school's employment department. An officer of the school estimated that perhaps twice as many graduates found employment of whom the school has no record.

It is the opinion of experts called by the Commission that neither the growth of the airconditioning and refrigeration industry nor the opportunities for employment therein are nearly as great as represented by the corporate respondent. The growth of the industry is no more than normal as compared with other industries. Specifically, with respect to the opportunities for men in the service field, it is pointed out that equipment generally, and particularly small domestic units, have been considerably simplified and that many sealed units which were formerly serviced by independent service men are now returned to the factory for service or repairs. The volume of the air conditioning business as expressed in money value is not necessarily an index to the opportunities for employment as is illustrated by air conditioning installations in large establishments which are taken care of by the resident engineer who may only require the service of an assistant or helper.

The names of many leading manufacturers in the air conditioning industry are prominently displayed in the advertising literature, and it is represented that many maufacturers have cooperated and actively participated in the formulation of the course of study. Up to 1939 the school featured an advisory board consisting of a number of executives of prominent manufacturers of air conditioning equipment. However, no meetings of the board were ever held, and it does not appear that it ever served any purpose or functioned in any manner, and the school announced early in 1939 that the board had been dissolved. The evidence shows, and the Commission finds, that no members of the industry actively cooperated in any manner in the formulation of the course of instruction, but merely supplied certain data; that the advisory board was used as an advertising feature; that there is no connection whatever between the respondent and the industry; and that the school is a purely private commercial undertaking of the individual respondents operating through the corporate respondent.

The so-called "vocational directors" are not experts in vocational guidance, nor are they engaged in selecting men of special qualifications. They are salesmen who call upon all prospects and endeavor to secure contracts of sale for the course from virtually all who can be induced to subscribe for the course and make a down payment. On several occasions the prospects mentioned their limited educational qualifications but they nevertheless were solicited and enrolled by the salesmen and such enrollment was later confirmed by the school.

Virtually all of the salesmen hold out the certainty of a job at the conclusion of a training period as the greatest inducement to enroll, some of them promising to secure jobs in any territory designated by the prospect. In several instances the amount of wages to be earned was considerably exaggerated. In many instances the alleged participation of the industry in the conduct of the school is urged as a desirable feature of the training course. The record shows that on several occasions the salesmen obtained signatures to the contracts for the payment of the tuition by representing the instrument to be an application or something other than a contract to pay the tuition fee, and by a show of great urgency or other means prevented the prospect from reading the contract and acquainting himself with its terms. For a period of time the contract did not contain a provision to the effect that the student had to pay an additional fee upon entering the laboratory training at respondent's place of business in Youngstown, Ohio. The contracts presently used do contain a provision to that effect. The evidence shows, however, that in all instances salesmen refrained from calling attention to the additional fee and that the students were not aware of that requirement until they were so advised by letter immediately prior to entering upon their shop training. Salesmen frequently assured students that payment of the tuition fee could be made in small monthly installments and could be extended beyond the completion of the training itself, and that the shop training could be taken at any time after the student had completed his correspondence course regardless of whether the tuition had been paid in full. Many prospects were assured that if they found they were unable to continue with the course they could drop the course at any time upon discovering that they could not continue it either for financial reasons or because they were unable to comprehend it. The written contract provides that payment of tuition must be completed before the student can enter the laboratory; that an additional fee is required to take the shop training; that the school does not guarantee

employment and various other provisions of which the prospect is not aware until he receives a copy of the contract. The evidence shows and the Commission finds that the salesmen were paid upon a commission basis and that in addition to the commissions, prizes in money and valuables were offered to salesmen sending in the greatest number of enrollments in a given period.

The school considers the contract to be unbreakable and has in many instances brought suit for the collection of the tuition fees, although the student may never have taken more than one or two lessons or even returned all the material without attempting to study the course. In some instances, refunds were made but in several cases only after extensive correspondence between the school and a better business bureau.

When the school returns to the enrollee his copy of the contract it also furnishes him with a questionnaire, the alleged purpose of which is to have the student advise the school whether he fully understands the terms of the contract and whether the salesman has conducted himself properly. This questionnaire, because of its phraseology and form, however, is not calculated to put a student on notice that its purpose is to afford him an opportunity to complain about the salesman, and the record does not show that any of the student witnesses advised the school through the medium of said questionnaire that the salesmen had made representations different from the terms of the written contract. Several of the prospects had no education beyond the eighth grade, and it appears that some of them found the lessons too difficult to comprehend and discontinued the course for that reason. An examination of the course of instruction discloses that a student must possess a fundamental knowledge of mathematics, algebra, chemistry, physical science, and electricity necessary to comprehend the course of training and apply the knowledge gained to the practical problems with which service men of air conditioning equipment have to deal. On several occasions the prospects called the salesman's attention to their evident lack of qualifications. This included a 14-year-old boy, whose deposit was refunded only after his mother had complained to the Better Business Bureau. In a number of instances representations in the advertising literature and statements by the salesmen are to the effect that students may obtain part-time work after having studied the course for some time and thereby earn a sufficient amount to enable them to pay the tuition fee by servicing domestic refrigerators. The evidence does not show that students did in fact secure such part-time work or that they would be qualified to do it.

The record shows that the Better Business Bureau of New York City, since 1937 had received 37 complaints, which constitutes the largest number of complaints against any one concern received by that bureau; that many of the complaints dealt with the misrepresentations made by one salesman, who was discharged by the respondent after a correspondence with the Better Business Bureau extending over a year.

The Commission finds that the representations with respect to the size, equipment, and facilities of the laboratory contained in the advertising literature and made by the salesmen are grossly exaggerated. Up to 1939, the equipment consisted of a number of old models of refrigerators to which a number of new units have been added recently. In 1938, only one instructor had charge of the shop, and in 1939, there were two instructors and a graduate of respondent's school who had charge of the laboratory instruction. At the present time there are four instructors who supervise the laboratory classes, which consist of about 30 pupils and who, in addition, correct all the papers sent in by the correspondence pupils.

The evidence shows, and the Commission finds, that the representations with respect to the wages that the graduates of the school may receive are grossly exaggerated for the reason that the wage scale which is paid to trained men in the industry is not applicable to graduates of respondent's school who have had no practical experience in the industry.

PAR. 6. The foregoing acts and practices used by respondents in connection with the offering for sale and sale of said courses of study and instruction have had, and now have, the tendency and capacity to and do mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and to induce them to purchase and pursue such courses of study and instruction on account thereof.

CONCLUSION

The aforesaid acts and practices of respondents as set forth in the foregoing findings as to the facts 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 re

spondents, testimony and other evidence in support of the allegations of the complaint, the filing of briefs and oral arguments having been waived, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Air Conditioning Training Corporation, a corporation, and its officers, and Benjamin M. Klekner, Morris A. Gluck, and Leon J. Knight, individually, and as officers of Air Conditioning Training Corporation, their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce as commerce is defined in the Federal Trade Commission Act of courses of study and instruction in the subjects of air conditioning and refrigeration which are conducted in whole or in part by correspondence do forthwith cease and desist from representing directly or by implication:

1. That students who complete said courses of training are assured of employment in the Air Conditioning and Refrigeration Industry or that jobs are guaranteed to such students or that respondents will secure such employment for said students.

2. That said courses of study and instruction are given with the cooperation of the Air Conditioning and Refrigeration Industry or that said industry has designated respondents to train men for employment therein or that such training is sponsored by such industry or that members of such industry have any arrangements with respondents for furnishing employment to students who finish said training.

3. That large numbers of vacancies which are available to said students who complete said training exist in the Air Conditioning and Refrigeration Industry or that there is an unusual demand for men in said industry or that such demand cannot be satisfied through the usual channels.

4. That members of the Air Conditioning and Refrigeration Industry formulated or assisted in the formulation of said courses of study and actively participated in the conduct of the school.

5. That respondents' salesmen are vocational directors or experts in vocational guidance engaged in selecting men of special qualifications for training in the Air Conditioning and Refrigeration Industry or are anything other than salesmen.

6. That part-time work in servicing air conditioning and refrigeration equipment is available to students while pursuing said courses of study and that said students are qualified for such work.

7. That starting wages for respondents' graduates are higher than the wages customarily paid to beginners or apprentices in said industry.

8. That any persons other than those with previous mechanical experience or who have demonstrated an aptitude for mechanics are qualified to pursue respondents' course of study and occupy positions in the Air Conditioning and Refrigeration Industry, requiring technical skill and scientific knowledge.

9. That the tuition fee is less than the amount stated in respondents' contract or that there are no charges other than the cost of tuition or that students may take the laboratory training without completion of the tuition payments.

10. That the laboratory or shop equipment is of greater extent and more comprehensive than it is in fact.

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

IN THE MATTER OF

CHERRY SPECIALTY COMPANY

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

Docket 3215. Complaint, Aug. 26, 1937—Decision, Apr. 3, 1941

Where a corporation engaged in the manufacture of candy and in the competitive interstate sale and distribution thereof, including certain assortments composed of a number of boxes of chocolate covered cherries, together with an electric lamp to be offered by the retailer as a prize to the ultimate purchaser of one of the boxes, and also a circular for retailer's use in disposing of candy in accordance with sales plan involving use of a lottery scheme or game of chance as indicated thereon, and as often carried out by the retailer through use of punch cards or other device by which the price to be paid for box of candy by the ultimate purchaser was determined by lot or chance—

(*a*) Sold such assortments to wholesalers, jobbers, and retailers by whom they were exposed for sale to the 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 its products in accordance with such plan, contrary to an established public policy of the United States Government and in competition with many who do not sell their merchandise by means of a lottery scheme or chance device;

With result that many persons were attracted by said chance sales plan or method and were induced to buy its product in preference to that of aforesaid competitors who do not use same or equivalent methods in the sale thereof, whereby trade in commerce was unfairly diverted to it from such competitors; and

(*b*) Represented that its said product had been examined and approved and certified by an independent and unbiased agency, unconnected with it, through placing on each package of its said products a replica of a red banner bearing the words "Seal of Approval" above an eight-pointed star with a circular seal in its center containing the words "Certified Chocolate Cherries" and its corporate name in smaller letters on the rim, and furthered said misrepresentation by supplying retail dealers with price cards upon which was conspicuously displayed the eight-pointed star and the "Seal of Approval" banner and the statement, among others, "Only selected, luscious, whole maraschino type cherries, enrobed in rich chocolate, and made under sanitary, wholesome conditions can merit this seal of approval";

Facts being that while it did thereafter and subsequent to complaint submit its said candy to an independent agency for examination and received latter's seal of approval, said candy theretofore had not been thus examined and approved or certified;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that said cherries were approved and certified by an independent and unbiased agency engaged in such activities and not connected with it, whereby substantial quantities of its candy were pur-

chased in preference to that of its competitors who do not falsely represent that their product has received such certificate of approval:

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. William C. Reeves*, *Mr. Arthur F. Thomas* and *Mr. Lewis C. Russell*, trial examiners.

Mr. D. C. Daniel and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Harry P. Kishner of Pennish & Rashbaum, 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 Cherry Specialty Co., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. The respondent, Cherry Specialty Co., is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 4722 Augusta Boulevard, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the manufacture, sale, and distribution of candy to wholesale dealers and jobbers and to retail dealers located at points in the various States of the United States. Respondent causes and has caused its said products when sold to be transported from its principal place of business in the city of Chicago, State of Illinois, to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture, sale, and distribution of candy in commerce between and among the various States of the United States.

Par. 2. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent sells and has sold to wholesale dealers and jobbers and retail dealers assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the ultimate consumers thereof. Said assortments are

composed of 24 one-pound boxes of chocolate covered cherries, together with an electric lamp and a display circular, which lamp is to be given as a prize to the purchaser of one of the boxes of candy contained in said assortments and which display circular is for use of the retail dealer in disposing of said boxes of candy by a sales plan or method involving a game of chance, a lottery scheme, or a gift enterprise. The said circular has imprinted thereon the following language:

FREE
LAMP
WITH CHOCOLATE CHERRIES

One of the purchasers of one of these
24 boxes of Cherries will receive
THIS LAMP

Register your name and address when you buy a box.

Respondent packs and assembles said assortments as above described so that they may be resold at retail by a lottery scheme, and respondent knows that in many cases they will be and are sold by means of a lottery scheme.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. Said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an electric lamp. 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 common law and criminal statutes have long deemed contrary to public policy, and

is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy in competition with respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent has the tendency and capacity, because of said game of chance to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

PAR. 6. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent, in soliciting the sale of and in selling and distributing certain of its candy and candy products, has advertised and represented that its chocolate covered cherries are "certified" and have received a "seal of approval," thereby representing that the said chocolate covered cherries have been certified by an independent or unbiased or unprejudiced organization or agency entirely unconnected with the respondent, and that such chocolate covered cherries have received the seal of approval of such inde-

pendent, unbiased or unprejudiced organization or agency, when in truth and in fact such representation is false and deceptive. Said chocolate-covered cherries have not been inspected or examined or certified by any such organization or agency and have not received the seal of approval by any such organization or agency.

PAR. 7. There are or have been independent organizations or agencies in no way connected with the manufacturer which examine or inspect various products being manufactured and sold and many such agencies or organizations which certify to such products and authorize or license manufacturers in distributing their products to place on the containers or on such products a certification or a seal of approval.

Many persons and dealers prefer to buy merchandise so certified or approved, believing thereby that they are procuring a product that has been examined or inspected by an independent agency or organization which is unbiased and unprejudiced and in no way connected with the manufacturer, and that in so buying they are assured of a better product. The use by respondent of such false, misleading, and deceptive advertising has the capacity and tendency to and does mislead and deceive many persons and dealers into purchasing respondent's products in preference to the products of respondent's competitors, and trade is thereby diverted to respondent from its competitors. There are many competitors of respondent who do not falsely represent that their products are so certified or have received the approval of such agencies or organizations.

PAR. 8. The aforesaid methods, acts, and practices of respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 26, 1937, issued and subsequently served its complaint in this proceeding upon respondent, Cherry Specialty Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint 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 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. The respondent, Cherry Specialty Co., is an Illinois corporation with its principal office and place of business located at 4722 Augusta Boulevard, Chicago, Ill. Respondent is now, and has been for more than four years last past, engaged in manufacturing candy including a cherry-centered chocolate candy and in the sale and distribution thereof to wholesalers, jobbers, and retailers.

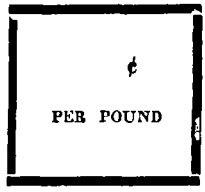
In the course and conduct of the aforesaid business, respondent ships said candy from its place of business in Chicago, Ill., to the purchasers thereof located in various States of the United States, other than Illinois. Respondent, during all the time mentioned herein, has maintained a course of trade in the sale of its candy in commerce among and between the various States of the United States.

In the course and conduct of its business as aforesaid, respondent has been during all the time mentioned herein in substantial competition with other corporations and with partnerships and individuals also engaged in the sale and distribution of candy in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its business as aforesaid, and prior to the date of the hearings herein, the respondent sold said cherry-center candy in assortments packed and assembled in such a manner as to involve the use of a lottery scheme or a game of chance when sold and distributed by retail dealers to the ultimate purchasers thereof. Said assortments were composed of a number of 1-pound boxes of chocolate-covered cherries. With each assortment the respondent furnished an electric lamp to be offered by the retail dealers as a prize to the purchaser of one of the boxes of candy

contained in the assortment, and also furnished a circular for the retail dealer's use in disposing of the candy by means of the aforesaid sales plan. Printed on each circular was the following language:

FREE
LAMP
WITH CHOCOLATE CHERRIES



One of the purchasers of one of these
24 boxes of Cherries will receive

THIS LAMP

Register your name and address when you buy a box.

The boxes of candy were often disposed of by the retail dealers through the use of punch cards or some other device by which the price to be paid for a box of the candy by the ultimate purchaser was determined by lot or chance. When all the boxes of candy were sold, one of the persons whose name had been registered was entitled to receive the electric lamp as a result of chance.

PAR. 3. Retail dealers who purchased respondent's said candy exposed the same for sale to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products in accordance with the aforesaid sales plan. 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.

PAR. 4. There are among respondent's competitors, mentioned in paragraph 1 here of, many corporations, firms, and individuals who do not sell their merchandise by means of a lottery scheme or chance device. Many persons are attracted by a chance sales plan or the method employed by respondent in the sale and distribution of its cherry center candy and such persons were thereby induced to buy respondent's candy in preference to candy of respondent's aforesaid competitors who do not use the same or equivalent methods in the sale

of their candy. 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 do not use the same or equivalent methods.

PAR. 5. In the course and conduct of its business as described herein, the respondent placed in the hands of retail dealers a price card upon which there was conspicuously displayed an eight pointed star with the simulation of a seal in the center thereof. On the seal were the words "Certified Chocolate Cherries." In another portion of the seal written around the edge thereof was the term "Cherry Specialty Company." Above the star was a banner carrying the term "Seal of Approval." On this same price card, among other statements, appear the following one: "Only selected, luscious, whole maraschino type cherries, enrobed in rich chocolate, and made under sanitary, wholesome conditions can merit this seal of approval."

In addition to the price card above referred to which is displayed by retailers, each package of respondent's products carries a replica of the seal which consists of the red banner containing the term "Seal of Approval" and the eight-pointed star with a circular seal in its center containing the words "Certified Chocolate Cherries." Respondent's corporate name Cherry Specialty Co. appears in smaller letters on the rim of the circular seal superimposed upon the eight-pointed star.

Respondent's cherry-center candy had not been examined and approved or certified by any independent or unbiased agency unconnected with the respondent, though subsequent to the issuance of the complaint herein the respondent did submit this particular type of candy to an independent agency for examination and did receive a seal of approval for its products.

The Commission finds that the respondent's method of using the above-described seal of approval on each box of the cherry-center candy constituted a representation that such product had been examined and approved or certified by an independent and unbiased agency which was unconnected with the respondent. This representation was furthered by the use of the above quoted language appearing on the price cards displayed by retail merchants in connection with the sale of this candy to the ultimate purchaser. These price cards were supplied to retail dealers by the respondent.

PAR. 6. There are independent organizations or agencies, in no way connected with manufacturers, which test and approve various manufactured products and authorize manufacturers or distributors of said

products to represent that the products have been tested and approved by such organization. There is a substantial number of purchasers who prefer to buy products that have been tested and approved by such organizations because of the belief on the part of such purchasers that products that have been tested and approved by such agencies are of a superior quality.

PAR. 7. The use by respondent of the expressions "seal of approval" and "certified" in the manner set forth herein has had and now has the capacity and tendency to mislead and deceive, a substantial portion of the purchasing public into the erroneous belief that said cherries were approved and certified by an independent and unprejudiced agency engaged in such activities and which is not connected with respondent. As a result of such erroneous belief, substantial quantities of respondent's candy have been purchased in preference to candy which did not bear a "seal of approval." Thereby, trade has been diverted unfairly to respondent from its aforesaid competitors who do not falsely represent that their candy has received a certificate of approval.

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 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 argument by DeWitt T. Puckett, counsel for the Commission, and by Harry P. Kishner, 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, Cherry Specialty Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy, or any other merchandise, in

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

1. Selling or distributing candy, or any other merchandise, so packed and assembled that sales of 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 display posters or other advertising literature either with assortments of merchandise or separately, which said display posters or other advertising literature inform the purchasing public that sales of said assortment of merchandise are to be or may be made by means of a game of chance, gift enterprise, or lottery scheme.

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

4. Using the terms "Seal of Approval" or "Certified" or any other terms of similar import or meaning to describe or refer to its products, or otherwise representing that such products have been inspected and approved by any organization unless such products have, in fact, been tested, approved and certified by an adequately equipped independent establishment engaged in the business of conducting impartial tests of the character represented.

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

WALLACE G. CLARK AND NORMAN A. DODGE, TRADING AS HYRAL DISTRIBUTING COMPANY

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

Docket 3726. Complaint, Feb. 28, 1939—Decision, Apr. 3, 1941

Where (1) two individuals, and (2) a corporation of which they were officers and directors and which, with the exception of a certain period, they fully owned and controlled; engaged in competitive interstate sale and distribution of a dental preparation known as Hyral; by advertisements disseminated through circulars, letters and other printed matter and by radio continuities broadcast from stations of interstate reception—

Represented that said Hyral was a notable new discovery in the field of dental hygiene which was both an antiseptic and a germicide and a cure or remedy for all mouth disorders, including bleeding gums, pyorrhea, and trench mouth, and constituted a competent and effective treatment for said conditions; that it would remove film, tobacco, food stains, and accumulated tartar from the teeth; would whiten teeth and prevent formation of tartar; correct foul breath, make condition of mouth entirely healthy, prevent loss of teeth; and make and keep gums firm;

Facts being that said product or powder, consisting of sodium perborate and sodium borate with pink coloring and flavoring, was not a new discovery but had long been used by members of the dental profession and in dentifrices; it would not cure trench mouth, though tending temporarily to inhibit growth of bacteria or germ causing it; nor, while it might, through its effervescent quality, remove loose particles of food lodged on the teeth, did it have any value in cleaning or whitening them or removing film; such effect as it might have on unpleasant breath odors would be limited to masking such odors temporarily; it had no special quality or value in whitening the teeth in excess of results obtained when used as an aid to the tooth brush, in which case its action would be the same as any ordinary dentifrice; and, except as above noted, it would not accomplish the results claimed;

With effect of confusing, misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true and thereby, into purchase of said product, whereby substantial trade in commerce was unfairly diverted to them from competitors who truthfully advertise their 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 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.

Mr. Norman A. Dodge, of Fort Worth, Tex., 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 Wallace G. Clark and Norman A. Dodge, and Hyral Distributing 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. The said respondents, Wallace G. Clark and Norman A. Dodge, both residents of the city of Dallas, State of Texas, were, for several years prior to April 1937, copartners trading and doing business under the name and style of Hyral Distributing Co., with their office and principal place of busines in the city of Fort Worth, State of Texas, and were engaged in the business of manufacturing, distributing and selling a certain preparation known as "Hyral," which is intended for use in the cure, mitigation, treatment or prevention of diseases in man. Respondents sold such preparation to members of the purchasing public situated in various States of the United States and in the District of Columbia, and caused said preparation when sold by them to be transported from their aforesaid place of business in the State of Texas to purchasers thereof located in the States of the United States other than the State of Texas and in the District of Columbia. During that period respondents maintained a constant course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 2. The respondent Hyral Distributing Co. is a corporation organized and existing under the laws of the State of Delaware and having its office and principal place of business at 3902 McKinney Ave., in the city of Dallas, State of Texas. The respondents Dodge and Clark have at all times been respectively the president and the vice-president and general manager of the corporation and have dominated and controlled its affairs. The corporation is now, and has been for more than one year last past, engaged in the business of manufacturing, distributing and selling the said "Hyral" to members of the purchasing public situated in various States of the United States and in the District of Columbia, and causes said preparation, when sold by it, to be transported from its aforesaid place of business in the State of Texas to the purchasers thereof located in States of the United States other than the State of Texas,

and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a constant course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said businesses, the respondent Hyral distributing Co., a corporation, is now, and has been for more than 1 year last past, and respondents Clark and Dodge were, in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other corporations and partnerships, and with individuals selling and distributing preparations and products designed and intended for and used in the treatment, relief and remedy of the conditions of the human body for which the respondents recommend, and have recommended, the use of the said "Hyral." Among such competitors in said commerce are and were many who do not, and did not, in any manner misrepresent their said preparations and products, or the therapeutic properties thereof, and who do not, and did not, make any false statements in connection with the sale and distribution of their said preparations and products.

PAR. 4. In the course and conduct of the aforesaid businesses, the said respondents have disseminated and caused the dissemination of, and the respondent corporation is now disseminating and causing the dissemination of, false advertisements concerning the said preparation, by United States mails, in circulars and other printed or written matter, all of which have been and are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations, which had and have sufficient power to, and do and did, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate, or originated, 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 said individual respondents have disseminated and caused the dissemination of, and the said corporate respondent has disseminated, and is now disseminating and has caused and is now causing the dissemination of, false advertisements concerning the said product by various means for the purpose of inducing, or 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 advertisements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, by respondents Clark and Dodge, are the following:

Hyral is a notable new discovery * * *

Hyral * * * H-Y-R-A-L * * * the unique dentifrice positively removed film and whitens teeth. Its continued use absolutely corrects and prevents all mouth disorders including Pyorrhea and Trench Mouth.

It makes the gums firm, hard and healthy as nature intended them to be—all of the ingredients of Hyral have cleansing and medicinal value. Hyral liberates oxygen in the mouth which penetrates into every crevice around and between the teeth, cleaning them thoroughly and killing harmful germs.—Hyral will make and keep your teeth wonderfully white and beautiful as nature intended.

Hyral removes tartar and keeps it away.

It liberates oxygen * * * dissolving film and loosening tartar. Hyral promotes the health of every part or organ it touches.

Hyral banishes sour tobacco breath, tobacco stain and taste; banishes that unpleasant dark brown morning-after mouth tang however caused and corrects fetid breath. It gives mouth hygiene 100% keeping the mouth cavity clean and wholesome.—Believe it or not, if Hyral were universally used mouth disorders of many kinds would practically disappear!—Allow Hyral to remain in your mouth several minutes to be absorbed, thereby cleansing it and destroying the germs that cause pyorrhea or other mouth ailments.—Bleeding gums (the beginning of pyorrhea) usually are relieved in three to ten days by daily twice-a-day use of Hyral; used more often, quicker results follow. Trench Mouth usually in about the same time.

Hyral will reach and clean thoroughly those unexposed surfaces of the teeth that the brush never reaches.

Hyral whitens the teeth and gives complete mouth hygiene.

* * * making your teeth white and beautiful—

Is there any such disorder affecting your health or embarrassing you with repulsive odors known as halitosis? Would you be pleased to have a dentifrice 100% cleansing and efficient which will keep your mouth in healthy condition? If so, use Hyral—the last word in mouth hygiene.

Among and typical of the false advertisements and representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid by respondent Hyral Distributing Company are the following:

It promotes oral hygiene.

Proper daily attention to mouth hygiene is the one sure way to white, sparkling teeth.

For—a breath beyond reproach use Hyral.

So don't you let dull, dingy, unattractive teeth mar your social or business opportunities. Hyral—will give you assurance—it will assist you in restoring the natural luster to your teeth.

Remember "Save Teeth first with Hyral tooth powder."

It helps to make the gums firm and healthy and the teeth more secure—You with tender gums or pyorrhea! Get Hyral.

It will help to prevent you from losing your teeth and assist you to regain sound healthy gums and gleaming beautiful teeth. Especially valuable to those whose teeth are threatened with pyorrhea.

Gradually tartar is formed, the gums are irritated and germs gain entrance to the gum tissues * * *. This is one way tender gums and pyorrhea get their start. Once the tissues are invaded nature seems powerless to overcome these germs. Hyral, the unique and popular dentifrice combats this destructive process at every step of its development including the final stage. It removes the film that coats the surface of the teeth. It penetrates into crevices between teeth and gums. It attacks the germs that have gained entrance into the gum tissue. Every ingredient in Hyral has antiseptic or germicidal qualities. It is 100% effective.

You teeth will acquire a new lustre from the day you start using Hyral—its distinctive properties make it especially valuable to those whose teeth are threatened with pyorrhea. Hyral—dissolves in the mouth setting free tiny bubbles of oxygen that foam into every crevice of the teeth purifying, deodorizing, cleansing.

Hyral removes food and tobacco stains.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set out, all of which purport to be descriptive of the causes of the ailments and conditions of the human body, for which respondents recommend and have recommended the preparation, and its effectiveness in the treatment of the said ailments and conditions, respondents Dodge and Clark directly, and by implication, among other things have represented that "Hyral" is a new and important discovery in the field of dental hygiene; that it will positively remove film and whiten the teeth; that it will prevent all disorders of the mouth, including pyorrhea and trench mouth, regardless of their cause, and is a cure and adequate remedy for all of them; that it will make the gums firm, hard, and healthy; that all its ingredients have cleansing and medicinal value; that it liberates oxygen in the mouth, which reaches and cleans all crevices, kills germs, loosens and removes tartar, and keeps it from forming; that it promotes the health of any part or organ that it touches; that it banishes tobacco breath, all tobacco stains, tobacco taste, dark-brown morning after mouth tang, regardless of its cause, and corrects fetid breath; that it will give a 100% hygienic condition to the mouth; that the universal use of "Hyral" would result in the practical disappearance of many mouth disorders; that its use twice a day is a complete treatment for, and will relieve, bleeding gums and trench mouth in three to ten days; that it will reach and thoroughly clean unexposed tooth surfaces and every crevice between the teeth and under the gums; that the use of

"Hyral" assures sparkling, white, beautiful teeth and a healthy, mouth, and is a competent remedy for halitosis; and respondent Hyral Distributing Co. in like manner has represented that "Hyral" promotes oral hygiene which is the one sure way to white and sparkling teeth; that it assures the user of an unobjectionable breath; that it will give the user business and social poise; that it will prevent the user from losing his teeth; that it will impart firmness and health to the gums and make the teeth gleaming, beautiful and more secure; that it will avert the deposition of tartar, will avert and is a competent treatment for pyorrhea, and that it will remove all stains on the teeth due to food or tobacco.

PAR. 6. The aforesaid representations used and disseminated by respondents in the manner above described are grossly exaggerated, misleading and untrue, and constitute false advertising. In truth and in fact "Hyral" is composed of ingredients which have long been known to the medical and dental professions, as have their properties. "Hyral" is neither a new nor a notable discovery, either in its ingredients or in their combination. While "Hyral" may remove the film deposited on the teeth as a consequence of eating and the action of the oral fluids, it has no effect in whitening the structure of the teeth themselves. "Hyral" will not prevent the user from being afflicted with any and all mouth disorders, including pyorrhea and trench mouth, regardless of their cause, nor is it an adequate remedy or cure for them. "Hyral" will not make the gums firm or hard nor restore unhealthy gums to health. The medicinal effects of some of the ingredients are negligible and the quantity of others in the preparation is insufficient to have any therapeutic significance. The oxygen released by the use of "Hyral" may be to some extent of cleansing and germicidal action, but is neither completely cleansing nor completely germicidal. "Hyral" will not loosen nor remove tartar deposits nor will it prevent their deposition. "Hyral" does not promote the health of all parts or organs which it touches. Its effect on the breath and taste in the mouth is but transitory. It will not remove all tobacco stains from the teeth. Its use will not render the mouth 100% hygienic, and such hygienic effect as it may have is only temporary. The universal use of "Hyral" would not cause many mouth disorders to substantially disappear. "Hyral" will not completely destroy all pyorrhea or other germs, and many mouth ailments are not caused by germs. Used twice daily it will not relieve bleeding gums or trench mouth in 3 to 10 days, nor is it a competent treatment for these conditions. It will not reach nor thoroughly clean unexposed tooth surfaces nor under the gums. All users of "Hyral" are not

assured of sparkling, white, beautiful teeth and clean, healthy mouths as a result of such use, nor is it a competent remedy for halitosis. The possession of white and sparkling teeth and an unobjectionable breath depends upon other factors as well as cleanliness of the oral cavity. Social or business assurance will not be created or fostered by the use of "Hyral." "Hyral" will not in all cases prevent the loss of the user's teeth. It has no effect upon the gums nor will it cause the teeth to remain or become more secure or, in the absence of other factors, to gleam or be beautiful. It will not remove all tobacco and food stains from the teeth.

PAR. 7. The use by respondents of the foregoing false, deceptive and misleading representations and claims disseminated as aforesaid with respect to said preparation has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and claims are true, that the preparation possesses the properties claimed and represented, and will accomplish the results indicated, and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of said preparation.

As a result trade has been diverted unfairly to the respondents from their competitors in said commerce who truthfully advertise the effectiveness and use of their respective preparations and products, as described in paragraph 3 hereof. In consequence thereof, injury has been and is now being done by respondents to competition in commerce among and between the various states of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce 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, 1939, issued and thereafter served its complaint in this proceeding upon the respondents Wallace G. Clark and Norman A. Dodge, individuals, and upon Hyral Distributing Co., a corporation, charging them with the use of unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by Norman A. Dodge, 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, and brief in support of the complaint (respondents not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The Commission finds that the respondent Hyral Distributing 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 in the city of Fort Worth, Tex. However, said corporation did not obtain a license to do business in the State of Texas until the year 1937. During the period from 1934 to 1937, the individual respondents, Wallace G. Clark and Norman A. Dodge conducted business as a copartnership under the trade name of Hyral Distributing Co. Said individual respondents were also owners of all the capital stock of the corporate respondent. On April 8, 1937, subsequent to the obtaining of a license to do business in the State of Texas by said corporate respondent, the individual respondents, Wallace G. Clark and Norman A. Dodge, entered into an agreement with Wesley Gilliland, Burton Gilliland, Evan E. A. Stone and C. H. Sterrett of Dallas, Tex., whereby said individual respondents, Wallace G. Clark and Norman A. Dodge, agreed to convey 50% of the capital stock in said corporation, Hyral Distributing Co., to said parties subject to certain forfeiture provisions on the nonperformance of certain conditions with reference to increasing the business. Pursuant to this agreement, the capital stock of said corporation was conveyed as provided and the place of business of said corporation was removed from Fort Worth, Tex., to the city of Dallas, Tex. The said individual respondents continued as officers and directors of said corporation but the management thereof was placed under the supervision of Evan

E. A. Stone. This agreement was continued until the year 1938, at which time said agreement was terminated and the stock of said corporate respondent was transferred back to the said individual respondents, Wallace G. Clark and Norman A. Dodge, who since that date have had full ownership and control of said corporation.

During all the times mentioned herein the individual respondents and the corporate respondent have been engaged in the sale and distribution of a certain dental preparation known as "Hyral" and have caused said preparation when sold to be transported from their places of business in the State of Texas to purchasers thereof located in various other States of the United States.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said dental 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 said business as hereinabove described, the respondents have been engaged in substantial competition in commerce among and between the various States of the United States with other individuals, corporations, firms, and partnerships, engaged in the business of selling and distributing dentifrices and preparations for use in the treatment of conditions of the human mouth, in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, the individual respondents, Wallace G. Clark and Norman A. Dodge, trading as Hyral Distributing Co., and the corporate respondent, Hyral Distributing Co., have disseminated false, deceptive and misleading representations concerning the efficacy of their preparation "Hyral" and the therapeutic value of said preparation. Such representations were made in circulars, letters and other printed matter and by radio continuities advertising said preparation broadcast from stations located in the State of Texas, which had sufficient power to and did convey said continuities to listeners in States other than the State of Texas. Among and typical of the statements and representations contained in such advertisements disseminated as aforesaid by the individual respondents, Wallace G. Clark and Norman A. Dodge, trading as Hyral Distributing Co., are the following:

Hyral is a notable new discovery * * *.

Hyral * * * H-Y-R-A-L * * * the unique dentifrice positively removes film and whitens teeth. Its continued use absolutely corrects and prevents all mouth disorders including Pyorrhea and Trench Mouth.

It make the gums firm, hard and healthy as nature intended them to be—all of the ingredients of Hyral have cleansing and medicinal value. Hyral liberates

oxygen in the mouth which penetrates into every crevice around and between the teeth, cleaning them thoroughly and killing harmful germs.—Hyral will make and keep your teeth wonderfully white and beautiful as nature intended.

Hyral removes tartar and keeps it away.

It liberates oxygen * * * dissolving film and loosening tartar.

Hyral banishes—tobacco stain—and corrects fetid breath. It gives mouth hygiene 100% keeping the mouth cavity clean and wholesome.—Believe it or not, if Hyral were universally used mouth disorders of many kinds would practically disappear!—Allow Hyral to remain in your mouth several minutes to be absorbed, thereby cleansing it and destroying the germs that cause pyorrhea or other mouth ailments.—Bleeding gums (the beginning of pyorrhea) usually are relieved in three to ten days by daily twice-a-day use of Hyral; used more often, quicker results follow. Trench Mouth usually in about the same time.

Hyral will reach and clean thoroughly those unexposed surfaces of the teeth that the brush never reaches.

Is there any such disorder affecting your health or embarrassing you with repulsive odors known as halitosis? Would you be pleased to have a dentifrice 100% cleansing and efficient which will keep your mouth in healthy condition? If so, use Hyral—the last word in mouth hygiene.

Among and typical of statements and representations contained in the advertisements disseminated by the corporate respondent, Hyral Distributing Co., are the following:

It promotes oral hygiene.

Proper daily attention to mouth hygiene is the one sure way to white, sparkling teeth.

For—a breath beyond reproach use Hyral.

—it will assist you in restoring the natural luster to your teeth.

Remember, "Save Teeth first with Hyral tooth powder".

It helps to make the gums firm and healthy and the teeth more secure—You with tender gums or pyorrhea! Get Hyral.

It will help to prevent you from losing your teeth and assist you to regain sound healthy gums and gleaming beautiful teeth. Especially valuable to those whose teeth are threatened with pyorrhea.

Gradually tartar is formed, the gums are irritated and germs gain entrance to the gum tissues. This is one way tender gums and pyorrhea get their start. Once the tissues are invaded nature seems powerless to overcome these germs. Hyral, the unique and popular dentifrice combats this destructive process at every step of its development including the final stage. It removes the film that coats the surface of the teeth. It penetrates into crevices between teeth and gums. It attacks the germs that have gained entrance ino the gum tissue. Every ingredient in Hyral has antiseptic or germicidal qualities. It is 100% active.

Your teeth will acquire a new lustre from the day you start using Hyral—its distinctive properties make it especially valuable to those whose teeth are threatened with pyorrhea. Hyral—dissolves in the mouth setting free tiny bubbles of oxygen that form into every crevice of the teeth purifying, deodorizing, cleansing.

Hyral removes food and tobacco stains.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents represent that "Hyral" is a notable new discovery in the field of dental hygiene which is both an antiseptic and a germicide and that it is a cure or remedy for all mouth disorders, including bleeding gums, pyorrhea and trench mouth, and that it constitutes a competent and effective treatment for such conditions; that said preparation will remove film, tobacco and food stains and accumulated tartar from the teeth and that it will whiten the teeth and prevent the formation of tartar; that it will correct foul breath, give an entirely hygienic condition to the mouth and prevent the loss of teeth.

PAR. 5. In the course and conduct of its business the corporate respondent, Hyral Distributing Co., and the individual respondents, Wallace G. Clark and Norman A. Dodge, individually and as officers and directors of said corporate respondent, have disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning said preparation "Hyral" by United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, and have also disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive misrepresentations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, by radio continuities and in circulars and other advertising literature, are the following:

Hyral * * * The amazing, different dentifrice not only cleans the teeth but helps to keep the gums firm.

It cleans the teeth and helps make firm gums.

Through the use of statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents represent that Hyral is a different or new dentifrice in the field of dental hygiene which will be effective in making and keeping the gums firm.

PAR. 6. The foregoing statements and representations used and disseminated by the individual respondents, Wallace G. Clark and Norman A. Dodge, trading as Hyral Co., and by the corporate re-

spondent, Hyral Distributing Co., in the manner and form as hereinabove set forth are grossly exaggerated, false, and misleading. Respondents' preparation "Hyral" is a powder consisting of one part sodium perborate and two parts sodium borate, flavored with oils of peppermint and wintergreen and colored pink with mercurochrome. This preparation is not a new discovery as both sodium perborate and sodium borate have long been known to and have been used by members of the dental profession and to some extent these ingredients have been used in dentifrice preparations. Sodium perborate when mixed with the saliva liberates oxygen which tends to inhibit the growth of the bacteria or germ causing the condition known as trench mouth but will not of itself or in combination with sodium borate affect a cure of such condition. Respondents' preparation as constituted is mildly antiseptic with no germicidal properties and has no therapeutic value in the treatment of bleeding gums or other mouth disorders in excess of that afforded by a mild antiseptic. In the case of trench mouth, this preparation might have some beneficial effects as a complementary treatment in temporarily inhibiting the growth of the bacteria causing trench mouth, but it does not constitute a cure or remedy for this condition. This preparation has no value in the treatment of the condition known as pyorrhea. It does not make the gums firm, hard, or healthy, or prevent the loss of teeth. The effervescent quality of this preparation might remove loose particles of food lodged on the teeth, but has no value in cleaning the teeth, removing film, or in any way whitening the teeth. This preparation will not remove tartar from the teeth or prevent its formation or have any effect on tobacco stains on the teeth. Its effect on unpleasant breath odors would be limited to temporarily masking such odors. This preparation has no peculiar or special qualities which would be of value in cleansing and whitening the teeth in excess of the results obtained when used as an aid to the tooth brush, in which case its action would be the same as any ordinary dentifrice.

PAR. 7. The aforesaid statements and representations of respondents relative to the efficacy and to the effectiveness in use of the preparation "Hyral" have the capacity and tendency to, and do, confuse, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of such preparation because of said erroneous and mistaken belief. Substantial trade in said commerce is thereby unfairly diverted to respondents from their competitors who are engaged in the sale and distribution of similar preparations and other preparations designed

and intended for similar usage, who truthfully advertise the extent of the value and effectiveness of their respective preparations.

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 also constitute unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto, taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and brief of counsel for the Commission filed herein; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Hyral Distributing Co., a corporation, and its officers, and Wallace G. Clark and Norman A. Dodge, individuals, and all of 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 a certain dental preparation designated as "Hyral," or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That respondents' preparation is a new discovery or that it has germicidal properties.

2. That respondents' preparation is a cure or remedy for bleeding gums or other mouth disorders, or that it constitutes a competent or effective treatment for such conditions in excess of that afforded by a mild antiseptic.

3. That respondents' preparation is a cure or remedy for trench mouth or that it constitutes a competent or effective treatment therefor in excess of temporarily inhibiting the growth of the bacteria causing trench mouth.

4. That respondents' preparation has any therapeutic value in the treatment of pyorrhea, or that it is a cure or remedy for such condition.

5. That said preparation will make the gums firm, hard or healthy, or that its use will prevent the loss of teeth.

6. That respondents' preparation will remove tobacco stains, or will remove or prevent tartar formations on the teeth.

7. That respondents' preparation will have any effect upon unpleasant breath odors in excess of temporarily masking such odors.

It is further ordered, That the respondent Hyral Distributing Co., a corporation, and its officers, and Wallace G. Clark and Norman A. Dodge, individually and as officers and directors of said corporation, 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 their preparation "Hyral," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same 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—

(*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 designated as "Hyral" is a new or different dentifrice or has any special properties which would be effective in making the gums firm or in keeping the gums firm.

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 "Hyral," which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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

IN THE MATTER OF

DAVID KRITZIK, TRADING AS GENERAL 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 3780. Complaint, May 2, 1939—Decision, Apr. 3, 1941

Where an individual engaged in conducting a premium and novelty business, and in competitive interstate sale and distribution of blankets, radios, cigarettes, candies, and other articles of merchandise;

Furnished to purchasers various devices and plans of merchandising which involved operation of games of chance, gift enterprise, or lottery schemes for sale and distribution of articles concerned to ultimate consumers by lottery and chance, including, as illustrative and typical, assortments consisting of (1) two blankets and a punchboard for use in selling and distributing said products under a plan by which purchasers securing from the 100 numbers secreted in the board, the two numbers corresponding to those in holes designated as grand prize became entitled to and received said blankets, others received nothing other than privilege of a punch, and cost of punch was determined by figures contained on slip of paper secured from hole selected; (2) twelve key holders equipped with dry cell and bulb, embedded in the upper portion of punchboard, secured by those selecting from the 400 covered holes, for the five cents paid, numbers corresponding to those displayed in connection with each of said twelve key holders, others receiving nothing for their money; and (3) a miniature radio, with a 110-hole punchboard, with ten punches free and prices of remaining 100 varying from 1 cent to 22 cents, as determined by slip secured, person punching out a certain number receiving said radio and others receiving nothing; and thereby

Placed in the hands of others various devices for the distribution of his merchandise by means of a game of chance, gift enterprise, or a lottery, contrary to the established public policy of the United States Government and in competition with others who are unwilling to and do not use in the distribution of their product any method involving chance;

With result, as consequence of its said methods, that trade was unfairly diverted to him from such competitors:

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

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

Mr. L. P. Allen, Jr., *Mr. D. C. Daniel* and *Mr. J. W. Brookfield, Jr.*, for the Commission.

Weinstein & Kline, 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 David Kritzik, individually and trading as General Merchandise 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 David Kritzik is an individual trading as General Merchandise Co., with his principal office and place of business located at 843 North Third Street, Milwaukee, Wis. Respondent is now, and for some time last past has been, engaged in the sale and distribution of blankets, radios, cigarettes, candy, 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 Wisconsin 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 sale and distribution of his said merchandise, as described in paragraph 1 hereof, respondent furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. One of respondent's assortments substantially illustrates the sales plan or method used in the sale or distribution of his merchandise to the purchasing public, and is as follows:

This assortment consists of two blankets, together with a device commonly called a punchboard. The punchboard contains 100 holes into which have been inserted slips of paper and on one side of said slips of paper is printed the amount the purchaser is to pay for the

privilege of making the punch. These amounts range from 1 cent to 22 cents. On the other side of said slips of paper is printed a number which entitles the holder thereof to one of the blankets if it corresponds with either of the numbers punched from the two holes designated as "Grand Prize." The slips of paper inserted into the holes designated "Grand Prize" are not punched out until all the 100 chances on said board are sold. Purchasers punching numbers from the board that do not correspond with the numbers on the slips of paper in the holes designated "Grand Prize" receive nothing for their money other than the privilege of making a punch. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The said merchandise is thus distributed to the purchasers of said punches from said board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of his said merchandise and furnishes, and has furnished, various devices for the distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plans or methods vary in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The dealers or purchasers to whom respondent furnishes said punchboards use the same in selling and distributing respondent's said 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 his merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute merchandise in competition with the respondent as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved

therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 2d day of May, A. D. 1939, issued and thereafter served its complaint in this proceeding upon the respondent, David Kritzik, charging him with the 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 L. P. Allen, Jr., D. C. Daniel, and J. W. Brookfield, Jr., attorneys for the Commission, and in opposition to the allegations of the complaint by Maurice Weinstein, attorney for respondent, before Miles J. Furnas, a duly appointed trial examiner of the Commission. 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, the testimony and other evidence, and briefs in support of the complaint and in opposition thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, David Kritzick, is an individual trading as General Merchandise Co. and having his principal place of business at 843 North Third Street, Milwaukee, Wis.

PAR. 2. Respondent, for more than 1 year prior to the issuance of the complaint herein was, and now is, engaged in conducting a premium and novelty business, and in the sale and distribution of blankets, radios, cigarettes, candies, and other articles of merchandise in commerce between and among various States of the United States and in the District of Columbia. Respondent causes said products, when sold, to be transported from his said place of business to purchasers thereof in various States of the United States at their respective points of location.

PAR. 3. Respondent, in the sale and distribution of his merchandise as described in paragraph 2 hereof, furnishes and has furnished to the purchasers thereof various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, by means of which said articles of merchandise are sold and distributed to the ultimate consumers thereof wholly by lot or chance. Typical of the methods so used by the respondent are the following:

(*a*) One of respondent's assortments consists of two blankets, together with a device commonly called a "punchboard." This punchboard has two small covered holes, each of which is designated "Grand Prize," and effectively concealed within which is a slip of paper on which a number is printed; below these are ranged one hundred small covered holes for which punches are to be sold, each containing a slip of paper, on one side of which is printed a number and on the other side the amount in cents to be paid for the punch, which ranges from 1 cent to 22 cents; if the number on the slip corresponds to that in one of the holes designated as "Grand Prize," it entitles the holder to one of the blankets. With the exception of the two thus acquiring the award, the purchasers of the right to punch receive nothing for their expenditure but the privilege of punching. The number and cost of the punch appearing on each of the slips are effectively concealed until the punch has been made and the slip removed, and the numbers printed on the slips within the holes marked "Grand Prize" are not disclosed until all of the 100 holes have been punched.

(*b*) Another of respondent's assortments consists of 12 keyholders termed "keyglos," each of which is equipped with a dry cell and a

bulb which lights up when contact is made. These keyholders are imbedded in the upper portion of the punchboard, and under each appears a number. In the lower portion of the board are 400 covered holes, each containing a number which is revealed when the hole is punched, a charge of 5 cents each being made for the right to punch. The persons punching a hole containing a number corresponding to a keyglo number receives the keyholder as a prize. The purchasers punching holes which do not contain a number corresponding to a keyglo number, receive nothing for their money.

(*c*) Another of respondent's assortments consists of a miniature radio, together with a punchboard. This punchboard has 110 covered holes, 10 of which are free; the price of the remaining 100 punches varies from 1 cent to 22 cents each, according to the price indicated. There is but one prize—the radio, and only the purchaser who punches out the number which calls for this award receives anything for the money expended.

Various other schemes of like character for merchandising his products are advertised in respondent's catalogue.

PAR. 4. Respondent, by his sales methods hereinbefore described, places in the hands of others various devices for the distribution of his merchandise by means of a game of chance, gift enterprise, or lottery; and respondent's said sales methods are contrary to the established public policy of the Government of the United States.

PAR. 5. During all of the time herein mentioned respondent has been in competition with other dealers in merchandise of a like or similar character who are engaged in commerce between and among various States of the United States and who are unwilling to use, and do not use, in the distribution of their merchandise any method involving a game of chance, gift enterprise, or lottery scheme; and as a result of respondent's said methods, trade has been unfairly diverted from such competitors to the respondent.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of re-

spondent, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, oral argument not having been requested, and the Commission having made its findings as to the facts and the conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, David Kritzik, individually and trading as General Merchandise 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, radios, keyholders 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 such 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 HUBINGER COMPANY

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

Docket 3801. Complaint, June 1, 1939—Decision, Apr. 3, 1941

Where a corporation engaged in manufacture and competitive interstate sale and distribution of glucose or corn syrup unmixed, and gluten feed, by-product thereof—

In selling its said syrup, of like grade and quality, to, mostly, candy manufacturers competitively engaged in sale to various customers, including chain stores, wholesalers, and retailers of candy, in most kinds of which such syrup is used, with cost thereof to candy manufacturer purchasers constituting (1) a substantial part of cost of raw materials used in particular candies having high syrup content and of the total cost of manufacturing an extensive line of candies having a wide range of syrup content, and (2) a significant and possibly determinative factor in competitive sales to customers, especially chain store and other large quantity purchasers, of many candies containing substantial quantity of such syrup ingredient, priced a few cents a pound only, and bearing no differentiating name or brand, and in sale of which candy sellers attract customers by selling at only fraction of a cent per pound lower than competitor, so that unfavored purchaser's higher raw material costs are difficult, if not impossible, to recover by increasing selling price of candy manufactured if such purchaser hopes to maintain his sales volume—

(*a*) Sold and delivered its said syrup in several types and sizes of containers, including barrels, half-barrels and 10- and 5-gallon kegs, at prices per hundredweight which increased over tank car prices per hundredweight according to size and type of container, with differentials ranging from 13 cents for such drums, where there was no return freight thereon, to $1.08 for said 5-gallon kegs;

(*b*) Sold its said product, between June 19, 1936, and July 25, 1937, at higher delivered prices per hundredweight to purchasers located in certain cities other than Chicago and Zion, Ill., than those at which it sold said syrup in containers of like size and type to purchasers located in such cities, and thereafter sold its said product to purchasers in certain cities other than Chicago at higher prices per hundredweight than those at which it sold its said syrup in containers of like size and type to purchasers located in city aforesaid, and at prices which were not uniformly higher, but varied with geographic location;

(*c*) Sold its said syrup to a certain Chicago concern at delivered prices which were 10 cents per hundredweight less than those which it charged other purchasers in said city, through granting and allowing it, for portion of period involved, such discount from its regular list prices for delivery in city in question, and thereafter through contract entered into by it with concern in question, under which discount was granted and allowed in consideration

of latter's undertaking to purchase minimum of 125 tank cars of product in question yearly, for delivery at rate of not less than 5 and not more than 35 cars a month;

(*d*) Sold its said syrup to a certain grocery company in Muskogee, Okla., at delivered prices which were 10 cents per hundredweight less than those at which it sold said product to other purchasers located in said city, through accepting arbitrary deduction of said amount in full payment for product sold to said concern, and invoiced to it at full current market price; and

(*e*) Continued to sell its said syrup to certain purchasers, most of whom were large quantity buyers and located in Chicago, at its old and lower price, while concurrently selling syrup of like grade and quality to other purchasers at its new and higher price;

With result that—

(1) It discriminated, through sale of its syrup at said varying prices, differences between which were not shown by it as making only due allowance for differences, if any, in the cost of manufacture, sale or delivery resulting from the differing methods or quantities, if any, in which said commodities were sold and delivered to such buyers, between purchasers who paid various different prices for commodities in question; and unfavored candy manufacturer purchasers, whose costs increased over those of favored purchasers directly as the amount of the discrimination between them and the syrup content of their candy increased, were placed under a competitive disadvantage;

(2) Effect on those unfavored manufacturer purchasers whose products were sold on very close and competitive margin, as hereinbefore set forth, and for whom it was difficult, if not impossible, to recover higher raw material costs by increasing price of product if purchaser hoped to maintain his sales volume, was to decrease his profit to extent necessary to absorb higher direct per unit cost imposed by higher syrup cost as long as he attempted to sell his candy at competitive price, and in event, through such absorption, of impairment of profit to any material degree, of bringing about only selective sales by such purchaser at non-competitive prices to customers on basis of service or on some other non-price basis, with consequently reduced volume of sales, unused capacity and increased overhead unit cost on particular, and also on all, products, with further impairment of profits thus entailed;

(3) Such impairment of profits tended to weaken, financially, existing unfavored candy manufacturers, with possibility of bringing about their elimination from the industry, and proved an effective deterrent to establishment of new candy manufacturing enterprises in those areas in which it discriminated as above set forth;

(4) There was conferred upon favored purchasers monetary benefits which gave them substantial competitive advantage, enabling them to reduce selling price of their candy, lower costs, and increase volume and profits, with result that such benefits could well lead to domination by said favored purchasers of industry in question; and

(5) Effect of lower prices granted to said Chicago and Muskogee concerns was sufficient to attract substantial business to instant corporation from its competitors; and

Where said corporation engaged, as aforesaid, in manufacture of such glucose or corn syrup unmixed and gluten feed, byproduct thereof, and in competitive interstate sale and distribution of such products;

In selling its said gluten feed, purchasers of which were all feed dealers competitively engaged in the resale thereof—

(*f*) Sold its said product to 9 particular purchasers at prices which were 50 cents per ton less than those at which it concurrently sold such feed of like grade and quality to all other purchasers, in accordance with the terms of a written contract entered into by it with them, providing for such an allowance in consideration of their undertaking purchase of 100 tons per month for 12 months;

with result that—

(1) It discriminated in price, through selling its said feed at such different prices, differences between which were not shown by it as making only due allowance for differences, if any, in the cost of manufacture, sale or delivery resulting from the differing methods or quantities, if any, in which such commodity was sold or delivered to such customers, between purchasers who paid the different prices therefor;

(2) Allowances granted and paid by it to such favored feed dealers were sufficient, if and when reflected in whole or substantial part in reduced resale prices, to attract business away from non-contract competing feed dealer customers of instant corporation paying higher prices, or to force such unfavored dealers to resell said feed at substantially reduced profit or refrain from reselling; and

(3) Such allowances were likewise sufficient, if not reflected in reduced resale prices, substantially to increase margins of profit of said contract feed dealers over and above margins of profit otherwise obtainable in resale of such commodity by such noncontract feed dealer customers paying higher prices to said corporation;

With effect that discriminations aforesaid in sale of such glucose or corn syrup unmixed and gluten feed as above set forth, might substantially lessen competition between favored and unfavored purchasers, tend to create monopoly in former and injure, destroy or prevent competition therewith, and that discriminations in favor of aforesaid Chicago and Muskogee concerns might be substantially to lessen competition or tend to create monopoly in line of commerce in which said corporation was engaged, and to injure, destroy or prevent competition with it:

Held, That in discriminating in price between different purchasers of glucose and of gluten feed, as above set forth, said corporation violated the provisions of Sec. 2 (*a*) of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. John P. Bramhall* and *Mr. John L. Horner*, trial examiners.

Mr. Frank Hier and *Mr. P. R. Layton* for the Commission.

Mr. J. O. Boyd, of Keokuk, Ia., for respondent.

Complaint

The Federal Trade Commission, having reason to believe that the respondent named in the caption hereof, and hereinafter more par-

ticularly 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, The Hubinger Co., is a corporation organized and existing under the laws of Iowa with its principal office and place of business at 1003 South Fifth Street in the city of Keokuk and State of Iowa.

PAR. 2. Respondent owns and operates a plant at Keokuk, Iowa. This plant has a corn grinding capacity in excess of 12,000 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 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 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 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, section 13) the Federal Trade Commission on June 1, 1939, issued and served its complaint in this proceeding upon the respondent, The Hubinger Co., 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 to make it more definite and certain was filed by re-

spondent. That part of said motion asking that the complaint be dismissed was denied by an order of the Commission on July 15, 1939, which said order granted 20 days' time within which to file written brief and argument in support of that part of said motion to make the complaint more definite and certain. Subsequently, on January 26, 1940, respondent having filed said brief in support of its motion to make complaint more definite and certain, the Commission entered its order denying the motion to make complaint more definite and certain. Thereafter, on February 16, 1940, and pursuant to an extension of time granted by the Commission, an answer was filed by the respondent. Pursuant to written notice to respondent of the time, date and place, hearings were commenced on June 20, 1940, before John P. Bramhall, an examiner designated by the Commission, at which hearings evidence in support of the charges made in the complaint was introduced by Frank Hier and P. R. Layton, attorneys for the Commission. Such hearings were continued on October 14, 1940, before John L. Hornor, an examiner designated by the Commission to take testimony and receive evidence in this proceeding in the place and stead of John P. Bramhall, the examiner theretofore appointed, and other evidence was introduced into the record by stipulation between counsel for the Commission and counsel for the respondent. Respondent presented no testimony in opposition to the charge contained in the complaint and waived all intervening procedure, oral argument, 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, answer and the record herein, and the Commission having duly considered the same and now being fully advised in the premises, makes this its findings as to the facts and its conclusion therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Hubinger Co., is a corporation organized and existing under the laws of Iowa, with its principal office and place of business at 1003 South Fifth Street, Keokuk, Iowa.

PAR. 2. For many years respondent has been, and is now, engaged in the business of manufacturing, distributing, and selling corn syrup unmixed, or glucose, which is one of the principal products derived from the refining of corn, and in the manufacture, distribution and sale of gluten feed, a byproduct in the manufacture of such syrup. For the manufacture of such products respondent owns and operates a

corn-refining plant at Keokuk, Iowa, which has a corn grinding capacity in excess of 12,000 bushels per day.

PAR. 3. For many years, in the course and conduct of its business, respondent has sold and shipped, and does now sell and ship, such syrup and such gluten feed in commerce between and among the several States of the United States, causing such syrup and such gluten feed to be sold and shipped from its said plant in Keokuk, Iowa, across State lines to purchasers thereof located in other States of the United States and in competition with other corporations engaged in similar lines of commerce.

PAR. 4. Such syrup has been sold and delivered by respondent in several types and sizes of containers, at prices per hundredweight which increase over the tank car price per hundredweight according to the size and type of container, as follows:

Container	Price per cwt. over tank-car price per cwt.
Tank wagons	$0.10
Returnable drums	[1] .13
Barrels	.33
Half barrels	.58
10-gal. kegs	.98
5-gal. kegs	1.08

[1] Where there is no return freight on empty drums.

Where there is some return freight on returnable drums, which freight is paid by respondent, the basic differential for corn syrup shipped in returnable steel drums of $0.13 per hundredweight over the tank car price per hundredweight, as shown above is increased but only sufficiently per hundredweight to approximately equal the amount of the return freight paid by respondent on the empty drum, so that the basic differential of $0.13 per hundredweight is not in any instance accounted for by any return freight on the empty drum paid by respondent.

PAR. 5. Between June 19, 1936, and July 25, 1937, respondent sold such syrup at higher delivered prices per hundredweight to purchasers located in certain cities other than Chicago and Zion, Ill., than it sold such syrup in containers of like size and type to purchasers located in said cities of Chicago and Zion, Ill.; and between July 25, 1937, and the present time, respondent sold such syrup to purchasers located in certain cities other than Chicago, Ill., at higher delivered prices per hundredweight than it sold such syrup in containers of like size and type to purchasers located in Chicago, Ill., and such higher prices were not uniformly higher but varied with

the geographical location of the cities in which the purchasers paying the higher prices 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 100 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:

TABLE I

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill	$2.94	$3.04	$2.29	$2.09
Zion, Ill	2.94	3.17	2.39	2.17
Keokuk, Iowa	3.11	3.20	2.47	2.27
St. Louis, Mo	3.10	3.20	2.47	2.27
Kansas City, Mo	3.32	3.40	2.69	2.49
St. Joseph, Mo	3.32	3.40	2.69	2.49
Muskogee, Okla	3.58	3.64	2.94	2.74
Oklahoma City, Okla	3.62	3.68	2.99	2.79
Fort Worth, Tex	3.72	3.77	3.09	2.89

Table II, which follows, shows the differentials which exist between the delivered prices set forth in table I, the differentials in each case being the amount per hundredweight, which purchasers in the several cities were charged over the price charged in Chicago, Ill.:

TABLE II

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill	$0.00	$0.00	$0.00	$0.00
Zion, Ill	.00	.13	.10	.08
Keokuk, Iowa	.17	.16	.18	.18
St. Louis, Mo	.16	.16	.18	.18
Kansas City, Mo	.38	.36	.40	.40
St. Joseph, Mo	.38	.36	.40	.40
Muskogee, Okla	.64	.60	.65	.65
Oklahoma City, Okla	.68	.64	.70	.70
Fort Worth, Tex	.78	.73	.80	.80

The following table III shows the railroad freight rates per hundredweight on corn syrup from respondent's plant at Keokuk, Iowa, to each of the cities enumerated in table I which were in effect on the dates for which the prices and differentials have been shown:

TABLE III

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill	$0.171	$0.16	$0.175	$0.175
Zion, Ill	----------	.205	.225	.225
Keokuk, Iowa	.000	.000	.000	.000
St. Louis, Mo	.139	.13	.145	.145
Kansas City, Mo	.299	.28	.31	.31
St. Joseph, Mo	.299	.28	.31	.31
Muskogee, Okla	.535	.50	.55	.55
Oklahoma City, Okla	.588	.55	.61	.61
Fort Worth, Tex	.684	.64	.71	.71

Table IV, which follows, shows the differentials which exist between the railroad freight rates per hundredweight set forth in table III, the differential in each case being the amount per hundredweight by which the freight rate from Keokuk, Iowa, to Chicago, Ill., is exceeded by the freight rate from Keokuk, Iowa, to the other cities enumerated except where the figure is preceded by a minus sign, in which case the reverse is true:

TABLE IV

Location of purchaser	Aug. 1, 1936	Aug. 1. 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill.	$0.00	$0.00	$0.00	$0.00
Zion, Ill.	----------	.045	.05	.05
Keokuk, Iowa	—.171	—.16	—.175	—.175
St. Louis, Mo.	—.032	—.03	—.03	—.03
Kansas City, Mo.	.128	.12	.135	.135
St. Joseph, Mo.	.128	.12	.135	.135
Muskogee, Okla.	.364	.34	.375	.375
Oklahoma City, Okla.	.417	.39	.435	.435
Fort Worth, Tex.	.513	.48	.535	.535

The extent to which the price differentials (shown in table II) make more than due allowance for differences in the cost of delivery (shown in table IV) is set forth below in table V, the figure in each case being the amount per hundredweight by which the price difference in table II exceeds the difference in freight rates in table IV:

TABLE V

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill.	$0.00	$0.00	$0.00	$0.00
Zion, Ill.	----------	.085	.05	.03
Keokuk, Iowa	.341	.32	.355	.355
St. Louis, Mo.	.192	.19	.21	.21
Kansas City, Mo.	.252	.24	.265	.265
St. Joseph, Mo.	.252	.24	.265	.265
Muskogee, Okla.	.276	.26	.275	.275
Oklahoma City, Okla.	.263	.25	.265	.265
Fort Worth, Tex.	.267	.25	.265	.265

PAR. 6. From April 6, 1938, until the present time respondent sold such syrup to E. J. Brach & Sons, Chicago, Ill., at delivered prices which were 10 cents per hundredweight less than the prices respondent charged other of such purchasers located in Chicago, Ill. Said lower prices were effected by respondent's granting and allowing to E. J. Brach & Sons a discount of 10 cents per hundredweight from respondent's regular list prices for delivery in Chicago such as are set forth in paragraph 5 above.

On and after May 1, 1939, at which time a written contract for the ensuing 12 months was entered into between respondent and E. J. Brach & Sons, which contract was renewed on May 1, 1940, said dis-

count was granted and allowed by respondent in consideration of an agreement by E. J. Brach & Sons, to purchase a minimum of 125 tank cars of such syrup per year to be delivered at the rate of not less than 5 and not more than 35 cars per month.

PAR. 7. Since June 19, 1936, respondent has sold such syrup to the Griffin Grocery Co. at Muskogee, Okla., at delivered prices which were 10 cents per hundredweight less than the prices at which respondent sold such syrup to other of such purchasers located in Muskogee, Okla. Such sales were invoiced by respondent at the full current market price, but the Griffin Grocery Company arbitrarily deducted 10 cents per hundredweight from the amount of each such invoice and remitted the balance to the respondent, which balance the respondent accepted in full payment for such syrup.

PAR. 8. Respondent, since June 19, 1936, after increasing the price of such syrup to the trade generally, has sold the same to some purchasers thereof, most of whom buy in large quantities and are located in Chicago, Ill., at the former and lower price while concurrently selling such syrup of like grade and quality to other purchasers at the new and higher price.

PAR. 9. Since January 1, 1939, and continuing up to the present time, respondent has sold its gluten feed to nine particular purchasers at prices which were 50 cents per ton less than the prices at which it concurrently sold such feed of like grade and quality to all other purchasers.

Such sales were made to said nine purchasers pursuant to the terms of a written contract entered into by respondent with each of them. Each contract provided that in consideration of the purchase of 100 tons per month for 12 months, respondent would pay and grant to the purchaser at the end of the contract period an allowance of 50 cents per ton.

PAR. 10. By selling such syrup at said different prices as found in paragraphs 4, 5, 6, 7, and 8, and by selling such gluten feed at said different prices as found in paragraph 9, the differences between any of which prices respondent has not shown to make only due allowance for differences, if any, in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities, if any, in which said commodities were sold or delivered to such purchasers, respondent has discriminated in price between such purchasers who have paid the various different prices for said commodities.

PAR. 11. All of such purchasers of gluten feed are feed dealers, competitively engaged in the resale of such feed to various customers; and the allowances granted and paid by respondent to said nine con-

tract feed dealers are sufficient if and when reflected in whole or in substantial part in reduced resale prices to attract business away from respondent's noncontract competing feed dealer customers paying higher prices, or to force the latter to resell such feed at a substantially reduced profit or to refrain from reselling. Such allowances are likewise sufficient, if not reflected in reduced resale prices, to substantially increase the margins of profit of the said contract feed dealers over and above the margins of profit otherwise obtainable in the resale of such feed by such noncontract feed dealer customers paying the higher prices to respondent.

PAR. 12. Most of such syrup, all of which is of like grade and quality, is purchased for use in the manufacture of candy; and most of such purchasers are competitively engaged in the sale of candy in which said syrup is used as an ingredient to various customers, including chain stores, wholesalers and retailers.

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 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 purchasers increase over said costs of such favored purchasers directly as the amount of the discrimination between them and as the syrup content of the candy increases.

Under such circumstances, one result of said discriminations has been to place the unfavored purchaser paying the greater prices for such syrup under a competitive disadvantage.

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 to other purchasers of large quantities to whom such a small difference in price is determinative in placing their business.

Such being the fact, 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 his sales volume. 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 an absorption causes an impairment of profit to any material degree, it results in such unfavored purchaser making only selective sales at noncompetitive prices to customers on the basis of service or on some other nonprice basis, and directly causes reduced volume of sales, resulting in unused capacity and increased overhead unit cost on particular as well as on all products; the consequence again being impairment of profit.

Such impairment of profits tends 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 deterrent 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 monetary benefits which have given them a substantial competitive advantage, enabling them to reduce the selling prices of their candy, lower costs, increase volume and increase profits. Such benefits can well lead to a domination by them of the candy industry.

The effect of the lower prices granted to E. J. Brach & Sons and to the Griffin Grocery Company and found in paragraph 10 to be a discrimination in favor of said purchasers was and is sufficient to attract substantial business to respondent from said E. J. Brach & Sons and from the Griffin Grocery Company and away from respondent's competitors.

PAR. 13. Therefore, the Commission finds that the discriminations found in paragraphs 4, 5, 6, 7, 8, 9, and 10 may substantially lessen competition between the favored and unfavored purchasers, tend to create a monopoly in such favored purchasers, and injure, destroy or prevent competition with such favored purchasers, and that the further effect of the discriminations in favor of E. J. Brach & Sons and the Griffin Grocery Co. may be to substantially lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, and to injure, destroy or prevent competition with respondent.

CONCLUSION

The Commission concludes that in discriminating in price between different purchasers of glucose and of gluten feed, as set forth in the

above findings of fact, the respondent, The Hubinger Co., 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 the respondent, the testimony taken and stipulated, and other evidence introduced before John P. Bramhall, and John L. Hornor, trial examiners 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 monopolies, and for other purposes," approved October 15, 1914, as amended by the Robinson-Patman Act, approved June 19, 1936, (title 15, section 13, U. S. C. A.).

It is ordered, That respondent, The Hubinger Co., 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 and gluten feed 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, and between different purchasers of gluten feed of like grade and quality, either directly or indirectly, in the manner and degree as found by the Commission in paragraphs 4, 5, 6, 7, 8, 9, and 10 of the Commission's findings as to the facts and conclusion.

2. From continuing or resuming the discriminations in price found by the Commission in paragraphs 4, 5, 6, 7, 8, 9, and 10 of the aforesaid findings as to the facts and conclusion.

3. From otherwise discriminating in price in a manner and degree substantially similar to the discriminations found in paragraphs 4, 5, 6, 7, 8, 9, and 10 of the Commission's findings as to the facts and conclusion.

4. From otherwise selling said glucose or corn syrup unmixed and gluten feed 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 the differences in cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered, 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 any equally low price of any competitor.

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

IN THE MATTER OF

VITAPHORE APPLIANCES, INC.

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

Docket 3884. Complaint, Aug. 31, 1939—Decision, Apr. 3, 1941

Where a corporation engaged in interstate sale and distribution to members of the public and physicians, of its Vibratherm heat and massage electric device for the alleged treatment, through internal and external use, of disorders of the pelvic region, both male and female, and particularly disorders of the prostate gland; by advertisements disseminated by mail and in newspapers and periodicals of general circulation, and in circulars and other written and printed matter—

Represented, directly and by implication, that the use of said device constituted a cure or remedy or was an effective and competent treatment for prostatitis, constipation, hemorrhoids, sexual decline, backache, headache, arm, leg and foot pains, bodily weakness, tired feeling, night rising, bladder weakness, nervousness, vaginitis, leucorrhea, cervicitis, inflammation of the ovaries and tubes, pelvic congestion, painful menstruation, congested ovaries, uterus and tubes;

Facts being it had no therapeutic value in the treatment of prostatitis in excess of furnishing temporary relief from pain by local application of heat, and not only was without therapeutic value in treatment of various conditions and disorders above set forth but use thereof might be harmful in the case of female disorders of the pelvic region where inflammatory conditions existed;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true and, because of such belief, of inducing it to purchase said devices in substantial number:

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. Wilbur N. Baughman, *Mr. Donovan Divet* and *Mr. John M. Russell* for the Commission.

Yeagley & Yeagley, of South Bend, 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 Vitaphore Appliances, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Com-

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

PARAGRAPH 1. Respondent, Vitaphore Appliances, Inc., is a corporation created by, and existing under the laws of the State of Indiana, with its principal office and place of business located in the Pythian Building, in the city of South Bend, State of Indiana.

Said respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a heat and massage device for the alleged treatment of prostate gland and female disorders, and kindred disorders of the pelvic region, designated "Vibratherm."

Respondent causes said device, when sold, to be transported from its place of business in the State of Indiana to the purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said 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 aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said device, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed and written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said device by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

Prostate sufferers and those having gland trouble or kindred disorders of the pelvic region such as hemorrhoids, constipation, etc. Relief guaranteed or money refunded.

If you suffer the misery of prostate trouble—have to get up nights—feel weak and tired—try Vibratherm for 10 days with no risk.

Prostate inflammation and enlargement is very common in adult men of all ages today. Unusual demands on the nervous system caused by our present day economic life and the general high tension pace that most of us have to face under modern conditions is broadly recognized as being mainly responsible for the widespread increase of prostate trouble which causes so much loss of vitality, leg and crotch pains, night rising, extreme nervousness, etc.

This company acquired a patent for the manufacture of an instrument which is operated by electricity, through which both heat and vibration is produced. The heat aids in reducing inflammation if the prostate gland is sore and inflamed and also aids in restoring proper circulation of the blood in the area of the prostate gland. Vibration will expel from the prostate gland accumulations of pus or foreign substances.

It has given many most excellent results in Prostate Enlargement, Hemorrhoids and many other pelvic disorders in both male and female.

It provides all the benefits of heat in prostatic and female pelvic disorders.

Immediate relief and relaxation are experienced by most patients through the tonic effect on the nervous system and the feeling of well-being this treatment induces.

Bladder irritation caused by prostatitis and other forms of congestion are treated as in prostatitis or intra-vaginally in the female.

Virbratherm combines heat and massage.

Affords heat, infra-red rays and vibration in prostatic disorders, vaginitis and hemorrhoids.

Relief guaranteed.

PAR. 3. Through the use of the statement and representations hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative or therapeutic properties of respondent's device, respondent represented and does now represent that the use of said device, known as "Vibratherm," will cure prostate disorders and the ailments, diseases, and conditions caused thereby; such as night rising, bladder weakness, backaches, headaches, arm, leg, and foot pains and nervousness; that said device is a cure or remedy for or effective in the treatment of hemorrhoids, constipation and sexual decline, prostatitis and kindred disorders of the pelvic region. By means of statements to the effect that said device is a cure or remedy for or effective in the treatment of various pelvic disorders of male and female and of vaginitis, the respondent represents that said device is a cure or remedy for or competent treatment of various female disorders, such as leucorrhea, cervicitis, inflammation of the ovaries and tubes, pelvic congestion, painful menstruation, congested ovaries, uterus, and tubes.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly

exaggerated, misleading and untrue. In truth and in fact, respondent's device, "Vibratherm" does not combine heat, infra-red, vibration, and massage, and it has no therapeutic value other than possible temporary symptomatic relief of pain from locally applied heat. It is not a cure or remedy for any disease or a competent treatment therefor. Respondent's device is not a cure or remedy for prostate disorders or any of the diseases, ailments or conditions caused thereby, and is not a competent treatment therefor. Said device will have no effect in the treatment or cure of night rising, bladder weakness, backaches, headaches, arm, leg and foot pains and nervousness. Said device is not a cure or remedy for hemorrhoids, constipation and sexual decline, prostatitis and kindred disorders of the pelvic region, and its use is not a competent treatment therefor. Respondent's device is of no value in the treatment of various female disorders of the pelvic region, including vaginitis, leucorrhea, cervicitis, inflammation of the ovaries and tubes, pelvic congestion, painful menstruation, congested ovaries, uterus and tubes, and relief cannot be guaranteed, nor the device used without risk.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations and advertisements disseminated as aforesaid with respect to said 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 induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase a substantial number of respondent's devices.

PAR. 6. The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 31, 1939, issued and subsequently served its complaint in this proceeding upon respondent, Vitaphore Appliances, Inc., 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 John M. Russell, attorney for the Commission, and in opposition to the allegations of the complaint by Messrs. Yeagley and Yeagley, attorneys for the respondent, before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded 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, Vitaphore Appliances, Inc., is a corporation organized under the laws of the State of Indiana with its principal office and place of business located at 825 East Jefferson Boulevard, South Bend, Ind.

PAR. 2. The respondent is, and since sometime prior to 1938 has been, engaged in the business of the sale and distribution, in commerce, of a heat and massage device designated "Vibratherm" which it sells to members of the general public and to medical doctors for the alleged treatment of disorders of the pelvic region, both male and female, and particularly disorders of the prostate gland.

PAR. 3. The device consists of bakelite case, containing a magnetic coil, or vibrating mechanism, with a dilator attached. Said dilator also contains heat coils. Upon attaching the device to an electrical socket and manipulating the switch on the back of the device, either vibration or heat, or both, can be obtained. When in use the dilator is inserted in the rectum or vagina by the user, and either vibration or heat, or both, are brought into play. There is also another part supplied with the appliance called an external applicator, being a glass bulb in the shape of a knob that is inserted in the case in place of the dilator and is to be used externally on the body.

PAR. 4. Respondent causes said device, when sold, to be transported from its place of business in the State of Indiana to the purchasers thereof located in other States of the United States and in the District of Columbia. At all times mentioned herein respondent has main-

tained 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. 5. In the course and conduct of its aforesaid business, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said device, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed and written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said device by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

PROSTATE SUFFERERS, and those having gland trouble or kindred disorders of the pelvic region. VIBRATHERM heat—massage—infra red relief guaranteed or your money back.

It also warms up the bowels and causes a copious movement and refreshes one like a tonic.

It has given me most excellent results in Prostatic enlargement, Hemorrhoid and many other Pelvic disorders in both male and female.

Since using your instrument, it has given me more "pep" than I have had for years, and I really believe it has given me a new lease on life.

I now begin my day refreshed, strong and with ten times the resistance against fatigue that I ever had. My physical condition is improved to the extent of turning the calendar back fifteen years. Appetites aroused are fulfilled in this rejuvenation of the glandular system as vigorously as in my youth.

The Vibratherm combines the following well known principles of healing; heat (infra-red ray), vibratory massage—dilation.

PROSTATE DISORDERS. Relief from suffering is generally experienced by ten to thirty minutes treatment, daily or less frequently, depending upon the gravity of the case. Regular treatment removes congestion, and where pus is present it will be drained through the urethra without finger massage.

By its gentle massage and its comforting warm heat, it loosens the congestion, soothes the inflammation, stimulates the blood circulation, helping relax tense muscles and nerves, and bringing blessed freedom from pain and worry.

The VIBRATHERM gives a simple positive source of heat and massage to the

prostate—It is designed and perfected for this purpose. Therefore, it would seem to be an ideal way of bringing comfort and relief and freedom from worry over prostate trouble.

I can truthfully state that the use of your instrument relieved my backache and prostate trouble and I sleep soundly.

Instructions for the home use of Vibratherm for the correction of prostate trouble are as follows:

If you suffer the misery of prostate trouble—have to get up nights—feel weak and tired—try vibratherm for thirty days with no risk. Many users enthusiastically praise it. Vibratherm employs both heat and Vibration (Massage) to encourage the flow of health giving blood to the afflicted organs—this is a method recognized by leading scientists as a proper treatment for prostate trouble.

PROSTATE TROUBLE Vibratherm will positively correct your condition or it costs you nothing.

PAR. 6. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's device designated "Vibratherm" 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, the following:

That the use of said device constitutes a cure or remedy for or is an effective and competent treatment of prostatitis, constipation, hemorrhoids, sexual decline, backache, headache, arm, leg and foot pains, bodily weakness, tired feeling, night rising, bladder weakness, nervousness, vaginitis, leucorrhea, cervicitis, inflammation of the ovaries and tubes, pelvic congestion, painful menstruation, congested ovaries, uterus, and tubes.

PAR. 7. The aforesaid statements and representations used and disseminated by respondent in the manner above described are grossly exaggerated, misleading and untrue and constitute false advertising. The Commission finds that respondent's device "Vibratherm" does not constitute a cure or remedy for prostatitis and that it has no therapeutic value in the treatment thereof in excess of furnishing temporary relief from the symptoms of pain where the local application of heat is indicated. The use of this device does not constitute a cure or remedy for night rising, bladder weakness, backaches, headaches, arm, leg or foot pains, or nervousness, and does not constitute a competent or effective treatment for such disorders and conditions. The use of this device has no therapeutic value in the treatment of hemorrhoids, constipation, or sexual decline. Said device has no value in the treatment of various female disorders of the pelvic region, such as vaginitis, leucorrhea, cervicitis, inflammation

of the ovaries and tubes, pelvic congestion, painful menstruation, congested ovaries, uterus or tubes, but, instead, the use of this device is contraindicated and may be harmful where inflammatory conditions exist in such female disorders.

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 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 has induced a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase a substantial number of respondent's devices.

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 Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and 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, Vitaphore Appliances, 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 device designated as "Vibratherm" or any other device of substantially similar construction or performing substantially similar functions, whether sold under the same name or 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 the use of respondent's device "Vibratherm" constitutes a cure or remedy for prostatitis or that it has any therapeutic value in the treatment thereof in excess of furnishing temporary relief from the symptoms of pain where the local application of heat is indicated.

(*b*) That the use of said device constitutes a cure or remedy for night rising, bladder weakness, backache, headache, arm, leg, or foot pains, or nervousness, or that it constitutes a competent or effective treatment for such disorders and conditions.

(*c*) That the use of respondent's device has any therapeutic value in the treatment of hemorrhoids, constipation, or sexual decline.

(*d*) That the use of said device is a cure or remedy for vaginitis, leucorrhea, cervicitis, inflammation of the ovaries and tubes, pelvic congestion, painful menstruation, congested ovaries, uterus or tubes, or other female disorders of the pelvic region, or that it has any therapeutic value in the treatment of such diseases and conditions.

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 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

FINK & 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 3890. Complaint, Sept. 12, 1939—Decision, Apr. 3, 1941

Where a corporation engaged in interstate sale and distribution of certain vitamin preparations designated "Mi-Vit-Ine" and "Vi-Min-Ex," and of a cosmetic preparation designated "Muriel Joan Beautifier;" by advertisements disseminated by mail and in newspapers and periodicals, and by circulars and other advertising literature—

(*a*) Represented directly and by implication that its said "Mi-Vit-Ine" was a cure or remedy for lowered vigor and vitality, constipation, colitis, stomach disorders, neuralgia and nerve disorders, caused by a deficiency of vitamin B in the diet, and constituted a competent treatment for such diseases and conditions; that use thereof would stimulate the appetite, improve digestion, make the bowels function normally and cause the user to gain in vigor and vitality; and that it was a different kind of wheat germ which constituted a proper dietary corrective, and was effective in the treatment of alcoholism;

Facts being such product was not a cure or remedy or competent treatment for aforesaid conditions and disorders which, while they may be symptoms of deficiency of Vitamin B, which is very difficult to determine, under ordinary conditions are due to many different causes, and for curative purposes, in unlikely event under circumstances of Vitamin B1 deficiency requiring curative doses, user would have to take approximately ten times the dosage per day recommended by said corporation; and preparation in question was not different kind of wheat germ, or a dietary corrective, and had no therapeutic value in aforesaid correction or as cure for alcoholism, in both of which its only value would be to stimulate the appetite;

(*b*) Represented directly and by implication that its said "Vi-Min-Ex" vitamin and mineral capsules constituted a cure or remedy for colds, constipation, spastic colitis, digestive disorders, neuritis, nervous disorders, anemia, loss of appetite and weight, lowered vigor and vitality, and tooth decay due to vitamin deficiency, and that use thereof constituted a competent treatment for said diseases and conditions; that such preparation supplied all the essential vitamins and minerals; and that there was no better source thereof;

Facts being said product was not a cure or remedy or competent treatment for said conditions and disorders, and, while vitamins contained therein would be effective in improving conditions of vitamin deficiency if taken in sufficient amounts, in the dosage recommended said product had little or no beneficial value, would not supply all essential vitamins and minerals required by the body and was not the best source thereof; and

(*c*) Represented that its "Muriel Joan Beautifier" would beautify and transform the face and make it bloom with beauty, causing skin blemishes, pimples, and blackheads to disappear and bringing about a beautiful complexion;

Facts being product in question, sold in the form of a moist paste to be allowed to dry upon the face, would not beautify or otherwise bring about the results claimed except to the extent that, it might cover up blemishes, pimples, or blackheads; it had no properties which would cause such blemishes to disappear and had no other permanent effect upon the skin;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true and inducing it to buy said products 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. William C. Reeves* and *Mr. Lewis C. Russell*, trial examiners.

Mr. Merle P. Lyon for the Commission.

Mr. Joseph Schultz, 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 Fink & 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 is a corporation, organized, existing and doing business under the laws of the State of New York, with its office and principal place of business located at 151 West 40th Street, New York, N. Y. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of certain vitamin preparations designated "Mi-Vit-Ine" and "Vi-Min-Ex" and of a facial cream designated as "Muriel Joan Beautifier."

Par. 2. Said respondent, being engaged in business as aforesaid, causes and has caused its said products, Mi-Vit-Ine, Vi-Min-Ex, and Muriel Joan Beautifier, when sold, to be transported from its place of business in the State of New York to purchasers located in States of the United States other than the State of origin of such shipments, and in the District of Columbia. There is now, and has been during all the times herein mentioned, a course of trade in the aforementioned products sold by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

Par. 3. In the course and conduct of its said business, the respondent has disseminated and is now disseminating, and has caused and is

now causing the dissemination of, false advertisements concerning its said products, by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Authorities say that many of our foods are deficient in essential vitamins and minerals—that's why we fall heir to such nutritional ailments as: Frequent Colds, Constipation, Spastic Colitis, Digestive Disorders, Neuritis, Nerve Disorders, Anemia, Loss of Appetite and Weight, Lowered Vigor and Vitality, Tooth Decay. If you are the victim of any of these ailments, due to vitamin and mineral deficiency, you need VI-MIN-EX. For VI-MIN-EX supplies all the essential vitamins and minerals your body requires.

You will find that VI-MIN-EX supplies you with those vital and essential elements that your food has been lacking—the indispensable minerals and vitamins. We know of no better source for the supply of these minerals and vitamins, so necessary for good health.

VI-MIN-EX will present to you A NEW WAY TO LIVE.

Colitis, constipation, digestive disorders, loss of vigor and vitality, frequent colds, neuritis, nervous disorders, are frequently traced to lack of essential vitamins and minerals in your food. To get relief, try Vi-Min-Ex. Vi-Min-Ex supplies the deficiencies by giving you, in pleasant, easy-to-take capsules, an abundance of the essential vitamins A, B, C, D, G, and minerals Calcium, Iron, Iodine, Manganese, Magnesium, Copper Zinc.

Sickly, Ailing Folks who are suffering from constipation, colitis, digestive disorders, loss of vigor and vitality, due to lack of essential vitamins and minerals in their foods, may be helped to better health by trying Vi-Min-Ex.

Starving on 3 Big Meals a Day. Yes! It is possible to eat 3 big meals a day and yet suffer from malnutrition. If your general health is poor, if you suffer from any of these ailments due to vitamin and mineral deficiency, you owe it to yourself to try Vi-Min-Ex. Vi-Min-Ex insures your getting the essential vitamins and minerals. If you don't see a marked improvement in your health and well being, if you don't eat better, sleep better, feel better in every way, You Get Your Money Back.

Vigor-Vitality-Health for Folks Past 40. Lowered vigor and vitality, constipation, colitis, stomach disorders, neuritis, nerve disorders are frequently caused by deficiency of Vitamin B in your diet. To replace this deficiency and enjoy better health try MI-VIT-INE, the tasty food concentrate, made from heart of wheat—Richest Natural Source of Vitamin B_1. A can of Mi-Vit-Ine approximates in Vitamin B_1 potency, any one of the following: 250 cakes baker's yeast, 40 pints milk, 150 eggs. Also contains 12 other essential vitamins and minerals.

Our amazing food concentrate, MI-VIT-INE, supplies your system with an abundance of Vitamin B1 plus 12 other essential vitamins and minerals. It is made from the Heart of the Wheat, the Richest Natural Source of Vitamin B1.

Try MI-VIT-INE. Others have found MI-VIT-INE just the proper dietary corrective they needed to stimulate the appetite, improve digestion, make bowels function normally, calm their nerves, free them from neuritis and colitis, make them gain in vigor and vitality. You Feel and Act Like a New Person.

This sensational seller, MI-VIT-INE, is an ABSOLUTELY DIFFERENT kind of wheat germ.

Try MI-VIT-INE at our risk. If it doesn't bring you the relief you expected. If you don't feel like a "new person," full of pep, energy and radiant health, we'll return your dollar to you.

Vitamin B Aids Alcohol Victims.

Vitamin B1 Found Neuritis Remedy.

Vitamin B Diet Shows Gain in Brain Power.

New Beautifier Amazes Thousands. Transforms the Face in 60 seconds. You simply apply this cream with a piece of wet cotton and instantly it makes your face bloom with beauty. Not only do pimples, blackheads and blemishes disappear—they soon clear up. Blackheads, pimples vanish. No waiting for results. Simply apply MURIEL JOAN BEAUTIFIER with a wet sponge. Instantly blotches and blemishes disappear, and soon clear up. The complexion becomes BEAUTIFUL. No more shiny skin.

25¢ May Make you a Real Beauty. Amazing New Beautifier Thrills Thousands. Girls and women who never before knew they could be beautiful now stand before a mirror in amazement since using Muriel Joan Beautifier. It is New York's sensational new beauty discovery—a cream applied with a wet sponge. Instantly skin faults disappear and soon clear up. Complexion BLOOMS with beauty.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other similar statements not herein set out, all of which purport to be descriptive of respondent's products and their effectiveness in use, the respondent has falsely represented, directly and by inference and implication, among other things: (1) That Vi-Min-Ex and Mi-Vit-Ine are competent treatments or effective remedies for constipation, low vitality, constant tiredness, malnutrition, loss of appetite and weight, nervousness, anemia, indigestion, gastric acidity, spastic colitis, colds, alcoholism, stomach ulcers, lowered sex interest, poor complexion, neuritis, nerve disorders, heart disease, paralysis, tooth decay, or any other disease, ailment, affliction

or condition of the human body; (2) that the ordinary American dietary is deficient and lacking in vital and essential minerals and vitamins, and that these minerals and vitamins can be supplied by Vi-Min-Ex and Mi-Vit-Ine; (3) that the above-named diseases and ailments are caused by a deficiency of Vitamin B1 in American dietaries, and that Vi-Min-Ex and Mi-Vit-Ine contain sufficient amounts of Vitamin B1 to serve as adequate treatments or effective remedies for clinically recognizable Vitamin B1 deficiencies; (4) that Vi-Min-Ex and Mi-Vit-Ine supply all the essential vitamins and minerals required by the body and are the best available source for a supply of such vitamins and minerals; (5) that Mi-Vit-Ine and Vi-Min-Ex will bring about a marked improvement in the general health and well-being and make a person eat better, sleep better and feel better in every way; (6) that Mi-Vit-Ine is an amazing food concentrate and an absolutely different kind of wheat germ; (7) that Mi-Vit-Ine and Vi-Min-Ex are dietary correctives and have value in stimulating the appetite, improving the digestion and general health, and will make one feel and act like a new person; (8) that Mi-Vit-Ine is the easy, drugless way to restore lost energy and vitality; and (9) that Muriel Joan Beautifier will beautify and transform the face, make the face bloom with beauty, cause skin blemishes, pimples and blackheads to disappear and vanish instantly, and bring about a beautiful complexion.

PAR. 5. The aforesaid representations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading and untrue, and constitute false advertisements. The true facts are that Vit-Min-Ex, Mi-Vit-Ine and Muriel Joan Beautifier do not have any of the qualities or achieve any of the results claimed and represented as hereinabove described.

Neither Vi-Min-Ex nor Mi-Vit-Ine is a competent treatment or an effective remedy for constipation, low vitality, constant tiredness, malnutrition, loss of appetite and weight, nervousness, anemia, indigestion, gastric acidity, spastic colitis, colds, alcoholism, stomach ulcers, lowered sex interest, poor complexion, neuritis, nerve disorders, heart disease, paralysis, tooth decay, or any other disease, ailment, affliction or condition of the human body. Mi-Vit-Ine will not rejuvenate or will it cure or reach the cause of any such disease, ailment, affliction or condition of the human body and it will not afford a complete recovery therefrom. Mi-Vit-Ine will not replace a vitamin deficiency and it is not a competent treatment nor an effective remedy for any condition caused by a vitamin deficiency. The ordinary American dietary is not deficient and lacking in vital and es-

sential minerals and vitamins, and these minerals and vitamins cannot be supplied by Vi-Min-Ex and Mi-Vit-Ine in adequately sufficient amounts. The diseases and ailments hereinbefore named are not caused by a deficiency of Vitamin B1 in American dietaries, and Vi-Min-Ex and Mi-Vit-Ine do not contain sufficient amounts of Vitamin B1 to serve as adequate treatments or effective remedies for clinically recognizable Vitamin B1 deficiencies. Vi-Min-Ex and Mi-Vit-Ine do not supply all the essential vitamins and minerals required by the body and are not the best available source for a supply of such vitamins and minerals. Mi-Vit-Ine and Vi-Min-Ex will not bring about a marked improvement in the general health and well-being or make a person eat better, sleep better, or feel better in every way. Mi-Vit-Ine is not a food concentrate and is not an absolutely different kind of wheat germ.

Mi-Vit-Ine and Vi-Min-Ex are not dietary correctives and have no value in stimulating the appetite, improving the digestion and general health, and will not cause one to feel and act like a new person, to be full of pep, or to have radiant health. Mit-Vit-Ine is not the easy, drugless way to restore lost energy and vitality, and it will not restore strength, energy or vitality, Muriel Joan Beautifier will not beautify or transform the face, make the face bloom with beauty, cause skin blemishes, pimples, and blackheads to disappear and vanish instantly, or bring about a beautiful complexion.

PAR. 6. The use of the aforesaid false and misleading statements, representations and advertisements by the respondent in designating or describing its said products, Vi-Min-Ex, Mi-Vit-Ine and Muriel Joan Beautifier, and their effectiveness in use, in offering for sale and in selling its said products, had, and now has, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true, and that said products possess the properties represented and will in truth accomplish the results claimed.

PAR. 7. As a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondent, as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of respondent's said products, Vi-Min-Ex, Mi-Vit-Ine and Muriel Joan Beautifier.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 12, A. D., 1939, issued and subsequently served its complaint in this proceeding upon the respondent, Fink & 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. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Merle P. Lyon, attorney for the Commission, and in opposition to the allegations of the complaint by Joseph Schultz, attorney for the respondent, before examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, 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, Fink & Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its office and principal place of business located at 151 West 40th Street, New York City, N. Y. Respondent, for more than 1 year last past, has been engaged in the sale and distribution in commerce among and between the various States of the United States of certain vitamin preparations designated "Mi-Vit-Ine" and "Vi-Min-Ex," and of a cosmetic preparation designated as "Muriel Joan Beautifier." Respondent causes said preparations, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparations in commerce among and between the various States of the United States and in the District of Columbia.

Par. 2. 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 concern-

ing its said preparations by 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 preparations by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its 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 periodicals having a general circulation, and by circulars and other advertising literature, are the following:

Vigor—Vitality—Health for Folks Past 40. Lowered vigor and vitality, constipation, colitis, stomach disorders, neuritis, nerve disorders are frequently caused by deficiency of Vitamin B in your diet: To replace this deficiency and enjoy better health try MI-VIT-INE, the tasty food concentrate, made from heart of wheat—Richest Natural Source of Vitamin B_1.

Try Mi-Vit-Ine. Others have found Mi-Vit-Ine just the proper dietary corrective they needed to stimulate the appetite, improve digestion, make bowls function normally, calm their nerves, free them from neuritis and colitis, make them gain in vigor and vitality. You Feel and Act Like a New Person.

This sensational seller, Mi-Vit-Ine, is an ABSOLUTELY DIFFERENT kind of wheat germ.

Vitamin B Aids Alcohol Victims.

Vitamin B_1 Found Neuritis Remedy.

Vitamin B Diet Shows Gain in Brain Power.

Authorities say that many of our foods are deficient in essential vitamins and minerals—that's why we fall heir to such nutritional ailments as: Frequent Colds, Constipation, Spastic Colitis, Digestive Disorders, Neuritis, Nerve Disorders, Anemia, Loss of Appetite and Weight, Lowered Vigor and Vitality, Tooth Decay. If you are the victim of any of these ailments, due to vitamin and mineral deficiency, you need VI-MIN-EX. For VI-MIN-EX supplies all the essential vitamins and minerals your body requires.

You will find that VI-MIN-EX supplies you with those vital and essential elements that your food has been lacking—the indispensable minerals and vitamins. We know of no better source for the supply of these minerals and vitamins, so necessary for good health.

Colitis, constipation, digestive disorders, loss of vigor and vitality, frequent colds, neuritis, nervous disorders, are frequently traced to lack of essential vitamins and minerals in your food. To get relief, try Vi-Min-Ex. Vi-Min-Ex supplies the deficiencies by giving you, in pleasant, easy-to-take capsules, an abundance of the essential vitamins A, B, C, D, G and minerals Calcium, Iron, Iodine, Manganese, Magnesium, Copper, Zinc.

New Beautifier Amazes Thousands. Transforms the Face in 60 seconds. You simply apply this cream with a piece of wet cotton and instantly it

makes your face bloom with beauty. Not only do pimples, blackheads and blemishes disappear—they soon clear up. Blackheads, pimples vanish. No waiting for results. Simply apply MURIEL JOAN BEAUTIFIER with a wet sponge. Instantly blotches and blemishes disappear, and soon clear up. The complexion becomes BEAUTIFUL. No more shiny skin.

25¢ May Make you a Real Beauty. Amazing New Beautifier Thrills Thousands. Girls and women who never before knew they could be beautiful now stand before a mirror in amazement since using Muriel Joan Beautifier. It is New York's sensational new beauty discovery—a cream applied with a wet sponge. Instantly skin faults disappear and soon clear up. Complexion BLOOMS with beauty.

PAR. 3. The Commission finds that through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent represents, directly and by implication:

1. That respondent's preparation Mi-Vit-Ine is a cure or remedy for lowered vigor and vitality, constipation, colitis, stomach disorders, neuritis, and nerve disorders caused by a deficiency of vitamin B in the diet, and that this preparation constitutes a competent treatment for such diseases and conditions; that the use of said preparation will stimulate the appetite, improve digestion, make the bowels function normally, and cause the user to gain in vigor and vitality; and that said preparation is a different kind of wheat germ which constitutes a proper dietary corrective and is effective in the treatment of alcoholism.

2. That respondent's preparation Vi-Min-Ex is a cure or remedy for colds, constipation, spastic colitis, digestive disorders, neuritis, nerve disorders, anemia, loss of appetite and weight, lowered vigor and vitality, and tooth decay due to vitamin deficiency, and that the use of said preparation constitutes a competent treatment in such diseases and conditions; that said preparation supplies all the essential vitamins and minerals required by the human body and that there is no better source for the supply of such minerals and vitamins.

3. That respondent's preparation Muriel Joan Beautifier will beautify and transform the face, make the face bloom with beauty, cause skin blemishes, pimples, and blackheads to disappear, and bring about a beautiful complexion.

PAR. 4. The Commission finds that the foregoing statements and representations made by the respondent with respect to the nature, properties, and therapeutic value of its said preparations are grossly exaggerated, false and misleading.

Respondent's preparation Mi-Vit-Ine is a defatted, dehydrated, wheat germ preparation containing not less than 1,000 International units of vitamin B per 100 grams. This preparation is not a cure or remedy for lowered vigor and vitality, constipation, colitis, stomach disorders, neuritis, and nerve disorders, and does not constitute a competent treatment for such conditions and disorders. Constipation, low vitality, underweight, indigestion, tiredness, loss of appetite, and some forms of neuritis and nerve disorders may be symptoms of a deficiency of vitamin B1, particularly when the disease condition amounts to beriberi, but under ordinary conditions such symptoms in an individual are due to many different causes. Vitamin B deficiency is very difficult to determine and in the event such deficiency has reached the stage where a curative dose of vitamin B1 is required, the user would have to take approximately 5 times the average preventative dose of 300 International units of vitamin B1, or approximately 1,500 units. The dosage of 1 tablespoonful per day recommended by the respondent amounts to approximately 150 International units of vitamin B1, and to take the necessary amount required as a curative dosage it would be necessary to take approximately 10 tablespoonsful of respondent's preparation per day. A vitamin deficiency resulting in the symptomatic conditions above mentioned would be very unlikely to occur in the locality where the respondent normally sells its product, and even where such condition does exist respondent's preparation, under conditions of use, has little or no therapeutic value in excess of stimulating the appetite and acting as a mild replacement therapy where only a mild deficiency of vitamin B1 exists.

The Commission further finds that by reason of the conditions under which constipation, low vitality, underweight, indigestion, tiredness, loss of appetite, and some forms of neuritis and nerve disorders are symptomatic of vitamin B_1 deficiency and by reason of the conditions of use of respondent's preparation, it is misleading to the general public to represent that this preparation has any therapeutic value in the treatment of constipation, low vitality, underweight, indigestion, tiredness, loss of appetite, and some forms of neuritis and nerve disorders, even though the therapeutic value is limited to such conditions when due to a vitamin B_1 deficiency.

The Commission further finds that respondent's preparation is not a different kind of wheat germ, but simply that the wheat germ has been defatted and dehydrated to prevent it becoming rancid. Respondent's preparation is not a dietary corrective, as its only value in this respect would be to stimulate the appetite.

The Commission further finds that respondent's preparation has no therapeutic value in the treatment of alcoholism, as such, and that its value is limited entirely to a stimulation of the appetite which may have been affected by reason of overindulgence.

Respondent's preparation Vi-Min-Ex consists of 2 forms of capsules, a vitamin capsule and a mineral capsule, with a daily dose indicated of 1 each of such capsules. The vitamin capsule contains 10,000 vitamin A U. S. P. units, 50 vitamin B_1 Sherman Chase units, 200 vitamin C International units, and 950 vitamin D U. S. P. units, and 10 vitamin G B_2 Sherman-Bourquin units. The mineral capsules each contain calcium, 7.5 milligrams; iron, 11.5 milligrams; iodine, 0.5 milligram; manganese, 5.0 milligrams; magnesium, 4.9 milligrams; copper, 2.0 milligrams; and zinc, 1.0 milligrams. This preparation is not a cure or remedy for colds, constipation, spastic colitis, digestive disorders, neuritis, nerve disorders, anemia, loss of appetite and weight, lowered vigor and vitality, or tooth decay, and does not constitute a competent treatment for such conditions and disorders. The vitamins contained in this preparation would be effective in improving conditions of vitamin deficiency if taken in sufficient amounts, but in the dosage recommended this preparation has little or no beneficial value and would not supply all essential vitamins and minerals required by the human body and is not the best source for the supply of such minerals and vitamins.

Respondent's preparation Muriel Joan Beautifier contains glycerine, Italian talcum, zinc oxide, mineral oil, water, and a small percentage of perfume oil. This preparation will not beautify or transform the face, or cause skin blemishes, pimples, or blackheads to disappear, or bring about a beautiful complexion. This product is sold in the form of a moist paste which is allowed to dry upon the face. To this extent, it might serve as a powder or powder base and, as such, cover up various blemishes, pimples, or blackheads, but has no properties which would cause such blemishes or other skin conditions to disappear or have any other permanent effect upon the condition of the skin.

PAR. 5. The Commission further finds that the use by the 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, representations, and advertisements are true,

and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's 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, 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 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, Fink & 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 its vitamin preparations designated "Mi-Vit-Ine" and "Vi-Min-Ex," and its cosmetic preparation designated "Muriel Joan Beautifier," or any other preparations of substantially similar composition 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 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 Mi-Vit-Ine is a cure or remedy for lowered vigor and vitality, constipation, colitis, stomach disorders, neuritis, or nerve disorders, or that it constitutes a competent treatment for such conditions and disorders; that this preparation is a dietary corrective or that it is composed of a different kind of wheat germ; or that this preparation has any therapeutic value in the treatment of alcoholism in excess of stimulating the appetite, which may have been affected by reason of overindulgence.

(*b*) That respondent's preparation Vi-Min-Ex is a cure or remedy for colds, constipation, spastic colitis, digestive disorders, neuritis, nerve disorders, anemia, loss of appetite and weight, lowered vigor and vitality, or tooth decay, or that it constitutes a competent treatment for such conditions and disorders; or that this preparation, under conditions of use, will supply all the essential vitamins and minerals required by the human body, or that this preparation constitutes the best source for the supply of such minerals and vitamins.

(*c*) That respondent's preparation Muriel Joan Beautifier will beautify or transform the face, cause skin blemishes, pimples, or blackheads to disappear, or bring about a beautiful complexion, or that this preparation has any properties which would cause blemishes or other skin conditions to disappear, or have any other permanent effect upon any condition of the skin.

2. 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 vitamin preparations designated "Mi-Vit-Ine" and "Vi-Min-Ex" and said cosmetic preparation designated "Muriel Joan Beautifier," 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

PETERSON CORE OIL & MFG. CO., AND HENRY S. PETERSON AND HAROLD A. PETERSON

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

Docket 3989. Complaint, Jan. 4, 1940—Decision, Apr. 3, 1941

Where a corporation and an individual, who was its president, treasurer, and principal stockholder and managed, controlled, and directed its policies and operation, and a second individual, who was sales manager of said corporation and, as such, participated in its management and operation, engaged in manufacture of core oil for foundry use and in interstate sale and distribution thereof—

(*a*) Falsely represented, on letterheads, that offices or branches were owned, maintained or operated in St. Louis, Buffalo, Philadelphia, and Detroit, and in Hamilton, Ontario, facts being it did not own, maintain or operate offices or branches in cities named or elsewhere; and

(*b*) Falsely thus represented that corporation's place of business was substantially larger than was the fact, through including in depictions on such letterheads of its purported place of business buildings in no way connected therewith;

With capacity and tendency to mislead and deceive purchasers or prospective purchasers, of whom many are unfamiliar with precise composition of product and depend upon responsibility of seller as guarantee of quality and serviceability thereof for use intended, and to whom representations as to size of plant and scope of business operations are frequently of importance as indicative of resources, permanence and stability of seller, and unfairly to divert to themselves trade from substantial competitors:

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 and deceptive acts and practices in commerce.

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

Mr. R. P. Bellinger for the Commission.

Eckert & Peterson, 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 Peterson Core Oil & Mfg. Co., a corporation, and H. S. Peterson and H. A. Peterson, individuals, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest,

hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Peterson Core Oil & Mfg. Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 704 South Kolmar Ave., Chicago, Ill. Respondent H. S. Peterson, of the same address, is president and treasurer of the corporate respondent above named, is the principal stockholder therein and manages, controls, and directs the policies and operation of said corporate respondent. Respondent H. A. Peterson, of the same address, is the son of the respondent H. S. Peterson, and is the sales manager of the respondent corporation.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in the business of manufacturing, selling and distributing core oil for use in foundries. Respondents sell said products to foundries situated in various States of the United States and the District of Columbia, and cause said products, when sold, to be transmitted from their aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in various States of the United States other than Illinois and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said products between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, as aforesaid, in connection with the sale and distribution of their product in commerce as herein described, the respondents represent by the use of the letterheads of the corporate respondent, Peterson Core Oil & Mfg. Co., that the said corporation maintains branches in St. Louis, Buffalo, Philadelphia, and Detroit, and through the use of an exaggerated pictorial representation of their place of business appearing on said letterheads showing large buildings as a part of their plant, that their business is larger, more extensive and more pretentious than is actually the fact.

PAR. 4. In truth and in fact respondents do not maintain places of business in any of the cities mentioned in the preceding paragraph hereof—St. Louis, Buffalo, Philadelphia, or Detroit or in any city other than Chicago, Ill.—with the exception of a branch at Ontario, Canada, and the large buildings shown in the picturization of their plant on said letterheads have no connection with the business of respondents and do not form a part thereof.

PAR. 5. A substantial portion of the purchasing public has shown a marked preference for dealing with, and purchasing products and merchandise from, manufacturers or other dealers who operate on a large scale, have branches and do a large volume of business, believing that by purchasing from such large concerns superior quality, better service, lower prices, and other advantages can be obtained.

PAR. 6. In the course and conduct of their said business, the respondents, in connection with the sale and distribution of their product in commerce as aforesaid have solicited and conducted business, and are soliciting and conducting business, under the fictitious trade names of "United States Linseed Oil" and "United States Linseed Oil Products" in a manner so as to import or imply that said trade names are those of independent competitors, when in fact such implied competitors or independents are bogus and do not exist. Such representations are made in part by the use of letterheads which read as follows:

UNITED STATES LINSEED OIL

FOUNDRY DIVISION

Manufacturers
of
Linseed Oil
Products

Address Reply:
Executive Offices
R. 406—179 W.
Washington St.
Chicago, Illinois.
U. S. A.

UNITED STATES LINSEED OIL PRODUCTS
179 W. Washington St. Room 406
Chicago, Illinois

FOUNDRY DIVISION

The names of fictitious persons are signed to the correspondence for the business conducted in said manner. Business is further solicited and conducted by respondents under said fictitious trade names by sending printed cards from Chicago, Ill., through the United States mails to prospective customers in various States of the United States other than Illinois and in the District of Columbia, which cards constitute orders for respondents' product and are to be returned by said prospective customers without the necessity of placing postage thereon, and which cards carry the following address printed thereon:

UNITED STATES LINSEED OIL PRODUCTS,
Room 406, 179 West Washington Street,
Chicago, Ill.

PAR. 7. In truth and in fact, the purported concerns "United States Linseed Oil" and "United States Linseed Oil Products" are not manufacturers of linseed oil products, or of any other products. No such business exists as "United States Linseed Oil" or "United States Linseed Oil Products." All business or orders received under said names are handled by the respondent H. A. Peterson, sales manager of the corporate respondent, Peterson Core Oil & Mfg. Co. Peterson Core Oil & Mfg. Co. fills said orders and makes shipments thereof from its place of business in the State of Illinois to the purchaser located in States other than Illinois and in the District of Columbia, said shipments being made in the fictitious trade names of "United States Linseed Oil" or "United States Linseed Oil Products," with no means of permitting the purchasers to detect that they are actually dealing with Peterson Core Oil & Mfg. Co., and are not purchasing from "United States Linseed Oil" or "United States Linseed Oil Products" as independent competitors of Peterson Core Oil & Mfg. Co. Said correspondence referred to herein has been conducted from the home of the respondent H. A. Peterson, or the plant of the respondent Peterson Core Oil & Mfg. Co., and not from 179 W. Washington St., the address printed on the letterheads described above, and none of the respondents is a tenant, occupant or owner of that address, but the respondents have an arrangement with the occupant of said address to accept any mail reaching that address in the names of "United States Linseed Oil" and "United States Linseed Oil Products" and deliver the same to the respondent H. A. Peterson, the sales manager of the corporate respondent, Peterson Core Oil & Mfg. Co.

PAR. 8. The use by respondents of the foregoing false, deceptive, misleading, and fraudulent statements, representations and implications with respect to respondents' business 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, representations, and implications are true, and that respondents' business is as represented, and into the purchase of respondents' said product because of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices 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 4, 1940, issued and subsequently served its complaint in this proceeding upon respondents, Peterson Core Oil & Mfg. Co., a corporation, Henry S. Peterson, an individual, and Harold A. Peterson, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by counsel for the Commission and in opposition to the allegations of the complaint by counsel for respondents, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); and the Commission, having duly considered the matter and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent Peterson Core Oil & Mfg. Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 704 South Kolmar Ave., Chicago, Ill. Respondent Henry S. Peterson, of the same address, is the individual named in the complaint as H. S. Peterson, is president and treasurer of Peterson Core Oil & Mfg. Co., is the principal stockholder therein, and manages, controls, and directs the policies and operation of that corporation. Respondent Harold A. Peterson, of the same address, is the individual named in the complaint as H. A. Peterson, is the son of respondent Henry S. Peterson, is the sales manager of respondent Peterson Core Oil & Mfg. Co., and as such participates in the management and operation of the business of such corporation.

Par. 2. The respondents are now, and at all times mentioned in the complaint have been, engaged in the manufacture, sale, and distribution of core oil for use in foundries and have caused said

products, when sold, to be transported from their place of business in Chicago, Ill., to purchasers located in the several States of the United States and in the District of Columbia, and have maintained a constant course of trade and commerce in said products sold and distributed between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the conduct of the aforesaid business respondents, in connection with the sale and distribution of said products, have in the course of such commerce represented by use of letterheads of the corporate respondent that offices or branches thereof are owned, maintained, or operated in St. Louis, Mo.; Buffalo, N. Y.; Philadelphia, Pa.; Detroit, Mich.; and Hamilton, Ontario; when in truth and in fact no such offices or branches are owned, maintained, or operated in the cities named or elsewhere; and, further, by the same means have represented the place of business of Peterson Core Oil & Mfg. Co., as being substantially larger than it is in fact by placing on such letterheads a pictorial representation of the purported place of business of the Peterson Core Oil & Mfg. Co., and including in such picture as constituting a part of such place of business buildings not owned, occupied, or in any way connected with the business of the Peterson Core Oil & Mfg. Co.

PAR. 4. Many purchasers of core oil are unfamiliar with the precise composition thereof and depend upon the responsibility of the seller as a guaranty of the quality of the product and its serviceability for the use intended. In such circumstances representations as to the size of the physical plant owned or operated and the scope of the business operations of the seller may be, and frequently are, of importance to purchasers as being indicative of the resources, permanence, stability, and responsibility of the seller.

PAR. 5. The aforesaid misrepresentations and false implications have the capacity and tendency to mislead and deceive purchasers or prospective purchasers and to unfairly divert trade to respondents from competitors with whom they are in active and substantial competition.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the 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 an examiner of the Commission theretofore duly designated by it, brief filed by counsel for the Commission (respondents having failed to file 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 Peterson Core Oil & Mfg. Co., a corporation, its officers, representatives, agents, and employees; respondent Henry S. Peterson, an individual, and respondent Harold A. Peterson, an individual, 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 core oil in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by the use of letterheads of the corporate respondent, or otherwise, that offices or branches are owned, maintained, or operated in any city or locality when no such office or branch is owned, maintained, or operated.

2. Representing pictorially, or otherwise, that the physical plant, equipment, and facilities owned, used, or occupied are greater than is the fact.

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

IN THE MATTER OF

MITCHELL A. BAZELON AND JACOB L. BAZELON, TRADING AS EVANS NOVELTY COMPANY AND PREMIUM 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 3711. Complaint, Feb. 14, 1939—Decision, Apr. 11, 1941

Where two partners for a time, and one of said individuals thereafter, as partnership successor, engaged in interstate sale and distribution of radios, fishing tackle, clocks, and a general line of merchandise, and in advertising their business in trade literature; in soliciting sale of and in selling their said products through various plans and devices which involved operation of games of chance, gift enterprises, or lottery schemes for sale or distribution thereof to ultimate consumers wholly by lot or chance, as illustrated and explained in circulars distributed to prospective customers—

Furnished to purchasers along with such merchandise, various punchboards and push cards, including, as illustrative, a combination consisting of a miniature radio and a 1,440-tube punchboard for use, as explained thereon, in sale and distribution or award of said radios and 74 other money prizes ranging from one $5 prize to 55 prizes of 10 cents, under a plan by which purchaser received, for 5 cents paid, one of said prizes or nothing other than privilege of chance, dependent upon success or failure in punching number corresponding to one of the "Jack-Pot" numbers, and with particular prize decided by ticket concealed in particular "Jack-Pot" tube selected, and purchaser of the last of the 1,440 punches receiving awards indicated in all the unpunched "Jack-Pot" tubes; and thereby placed in the hands of others various plans, methods and devices involving such games of chance;

With the result that many persons were attracted by said sales methods and were thereby induced to purchase said individuals' merchandise in preference to that offered by competitors who do not use any such method, whereby trade was unfairly diverted from them to individuals aforesaid:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors, were contrary to the established public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

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

Mr. D. C. Daniel and *Mr. L. P. Allen, Jr.*, for the Commission.

Mr. Gordon L. Bazelon and *Mr. Morton J. Harris*, 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 Mitchell A. Bazelon and Jacob L. Bazelon, individually and as copartners trading as Evans

Novelty Co. and Premium 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. The respondents, Mitchell A. Bazelon and Jacob L. Bazelon, are individuals and copartners trading as Evans Novelty Co. and Premium Sales Co., with their principal office and place of business located at 946 Diversey Parkway, Chicago, Ill. Respondents are now, and for some time last past have been, engaged in the sale and distribution of radios, clocks, novelty dolls, fishing tackle sets, cameras, novelty cigarette containers, electric drink shakers, 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 merchandise, when sold, to be transported from their aforesaid place of business in the State of Illinois to the purchasers thereof in the various States of the United States other than Illinois and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondents in said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondents are now, and for some time last past have been, in competition with other partnerships and with corporations and individuals engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, in said commerce, as described in paragraph 1 hereof, respondents sell, and have sold, to wholesale dealers, jobbers, and retail dealers, various articles of merchandise so sold and distributed as to involve the use of a game of chance, gift enterprise or lottery scheme. One of respondents' deals substantially illustrates the sales plan or method used in the sale and distribution of their merchandise to the purchasing public, and is as follows:

This deal consists of a radio, together with a device commonly called a punchboard. The said radio is distributed to the consuming public by means of said punchboard, in the following manner: the sales are 5 cents for each punch, 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 is divided into two sections, one containing approximately 1,440 punches and the other, known as the "jackpot," contains 75 punches. The board bears the statement or statements informing prospective purchasers that certain specified numbers, punched from the larger section, entitle the purchaser thereof to a punch in the said jackpot and that a punch in the jackpot entitles the purchaser to a prize, depending upon the punch selected in the jackpot, of either $5, $1, 50 cents, 25 cents, 10 cents or the said radio as a grand prize. A purchaser who does not qualify by obtaining one of the winning numbers receives nothing for his money other than the privilege of punching a number from the board. The numbers and winning punches 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 retail value of the said radio is greatly in excess of the designated price of said punches. The radios and other articles of merchandise are thus distributed to the purchasers of said punches from said board wholly by lot or chance.

Respondents sell and distribute various articles of merchandise and furnish various punchboards and 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 plans or methods vary in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish the said punchboards and push cards use the same in selling and distributing respondents' said 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 said 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 said 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 re-

spondents 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 the 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 competitors of respondents who do not use the same or 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 14th day of February A. D. 1939, issued and thereafter served its complaint in this proceeding upon the respondents, Mitchell A. Bazelon and Jacob L. Bazelon, individually and as copartners trading as Evans Novelty Co. and Premium Sales Co., charging them with unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel and L. P. Allen, Jr., attorneys for the Commission, before Miles J. Furnas, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding. The attorneys for respondents introduced no testimony or other evidence. The testimony and other evidence introduced were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, and brief in sup-

port of the complaint (no brief being filed by respondents' attorneys nor oral argument requested). And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Mitchell A. Bazelon and Jacob L. Bazelon, were copartners from November 1937 to March 1, 1939, and during said time traded as Premium Sales Co. From January or February 1938, to March 1, 1939, they also traded as Evans Novelty Co. On March 1, 1939, respondent Jacob L. Bazelon purchased the interest of Mitchell A. Bazelon in the business and since then has been and now is the sole owner of said business, and has continued to conduct same under the aforesaid trade names. During the entire existence of the partnership respondents' principal place of business was located in the city of Chicago, State of Illinois, and respondent Jacob L. Bazelon has continued to conduct his business at the same place at all times since he has been the sole owner.

PAR. 2. Respondents, during the existence of the partnership, were, and since March 1, 1939, respondent Jacob L. Bazelon has been and now is, engaged in the business of selling and distributing to jobbers and distributors, radios, fishing tackle, clocks, and a general line of novelty merchandise, and have caused said merchandise, when sold, to be shipped from their said place of business to purchasers located in various States of the United States.

PAR. 3. Respondents, in the course and conduct of their business as set forth in paragraph 2 hereof, as copartners were, and respondent Jacob L. Bazelon now is, in competition with other individuals, partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among various States of the United States.

PAR. 4. From November 1937, to some time in January or February 1938, respondents said business was conducted under the trade name "Premium Sales Company;" since said time no sales have been made by them or either of them under said trade name, but all purchases have been made under the trade name, "Premium Sales Company," and the selling and distribution of respondents' merchandise have been conducted under the trade name, "Evans Novelty Company."

PAR. 5. Respondents, in the sale and distribution of their merchandise described in paragraph 2 hereof, as copartners furnished,

and respondent Jacob L. Bazelon has since furnished and now furnishes, to purchasers thereof, various plans and devices which involve the operation of games of chance, gift enterprises, or lottery schemes, by means of which said merchandise is sold and distributed to the ultimate consumers wholly by lot or chance. Typical of the methods used by the respondents is the following:

One of respondents' combinations consists of a miniature radio and a punchboard whose caption bears a description of the radio. Below this caption, under the designation "Jack Pot," are 75 covered tubes, each containing a ticket bearing words or figures indicating the prize to be awarded, and which is effectively concealed until the cover of the tube has been punched and the ticket removed. The awards thus made are as follows: One grand prize (the radio); 1 prize of $5; 1 prize of $1; 5 prizes of 50 cents each; 12 prizes of 25 cents each and 55 prizes of 10 cents each.

To the right of this jack pot is an illustration of a miniature radio, while to the left is a series of 25 numbers ranging from 25 to 625, followed by the statement, "Each Receives One Punch In The Jack Pot."

In the lower section of the board, under the heading "Last Sale On Board Receives Remaining Punches in Jack Pot," are ranged 1,440 covered tubes, for the right to punch which a charge of 5 cents each is made. Each of these tubes contains a ticket which is effectively concealed until the cover of the tube has been punched and the ticket is then removed. On each of 25 of these tickets is printed one of the numbers shown at the left of the jack pot, and each entitles the purchaser to one punch of the jack pot and to the award thus disclosed. The purchaser of the last of the 1,440 punches is entitled to the awards indicated in all the unpunched tubes of the jack pot. Purchasers who do not obtain any of the awards indicated in the jack pot receive nothing for their investment but the right to punch one of the 1,440 tubes.

Other items of merchandise were sold and distributed by respondents during the copartnership, and have since been and are now sold and distributed by Jacob L. Bazelon, by means of like or similar methods, and the punchboards accompanying such merchandise differ only in detail.

PAR. 6. Respondents, in soliciting the sale of and selling their said merchandise, as copartners have distributed, and respondent Jacob L. Bazelon has since distributed and now distributes, to prospective customers, circulars illustrating and explaining their plans, methods,

and devices for the sale and distribution of their merchandise as set forth in paragraph 5 hereof, and have advertised their said business in trade literature.

PAR. 7. Respondents, by their sales methods hereinbefore described, as copartners have placed, and respondent Jacob L. Bazelon now places, in the hands of others various plans, methods, and devices which involve games of chance, gift enterprises, or lottery schemes to be used in the distribution of said merchandise, and by the use of such plans, methods, and devices, such merchandise is distributed to the ultimate consumers wholly by lot or chance.

PAR. 8. Many persons have been and are attracted by the sales methods employed by respondents in the sale and distribution of their said merchandise and by the element of chance involved therein, and have been thereby induced to purchase respondents' merchandise in preference to merchandise offered for sale by respondents' competitors who do not use the same or a similar method.

PAR. 9. During all of the times herein mentioned, respondents have been in competition with individuals, partnerships, and corporations engaged in the sale and distribution in commerce of merchandise similar to that sold by respondents, in commerce between and among various States of the United States, who are unwilling to use and do not use, in the sale and distribution of their merchandise, any method involving a game of chance, gift enterprise, or lottery scheme, and as a result trade has been unfairly diverted from such competitors to the respondents.

CONCLUSION

The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and of respondents' competitors, are contrary to the established public policy of the Government of the United States of America, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony, and other evidence taken before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, and brief filed by the attorney for the Commis-

sion (no brief being filed by respondents and oral argument not requested), and the Commission, having made its findings as to the facts and its conclusion that the respondents, Mitchell A. Bazelon and Jacob J. Bazelon, individually and trading as Evans Novelty Co. and Premium Sales Co., have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Mitchell A. Bazelon and Jacob L. Bazelon, their representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of radios, fishing tackle, clocks or any other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Selling or distributing any merchandise so packed or 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 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 said 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 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

DOUGLAS 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 3817. Complaint, June 13, 1939—Decision, Apr. 11, 1941

Where a corporation engaged in manufacture of candy and in competitive interstate sale and distribution thereof—

Furnished to purchasers various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for sale and distribution of said product to the ultimate consumer wholly by lot or chance, including as typical of methods used, a number of 5 cent candy bars packed as (1) "Winner Bar Assortment," (2) "Play Ball" and (3) "Basket Ball" combinations, together with punchboards for use in their sale and distribution under plans, as explained thereon, by which purchaser received 1 to 5 or 6 bars, in accordance with number concealed in disc beneath feminine name selected, or, in latter two cases, dependent upon his success in selecting from the three hundred tube boards involved, one of the 5 or 6 tubes containing special award legends; and thereby

Placed in the hands of others various devices for use in the distribution of its merchandise by means of said game of chance and boards, employment of which its salesman truthfully urged as assisting in sale of candy involved, contrary to the established public policy of the United States Government;

With result that trade was thereby diverted to it from its manufacturer and distributor competitors who were unwilling to and did not use such method:

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

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

Mr. William L. Pencke and *Mr. L. P. Allen, Jr.* for the Commission.

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

PARAGRAPH 1. Respondent, Douglas Candy Co., is a corporation organized and doing business under the laws of the State of Mis-

souri with its principal office and place of business located at 209 South Second Street, St. Joseph, Mo. Respondent is now and for some time last past has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. The respondent causes and has caused said products, when sold, to be transported from its principal place of business in the city of St. Joseph, Mo., 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 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 a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumers thereof. Respondent also causes and has caused push cards and punchboards which are designed to be and are used with the said assortments to be shipped to the aforesaid wholesale dealers, jobbers, and retail dealers. The wholesalers and jobbers, aforesaid, in turn assemble the push cards or punchboards and candy into one assortment and sell same to the retail trade. Respondent distributes and has distributed various push cards and punchboards for use in the sale and distribution of its candy to the consuming public by means of a game of chance, gift enterprise, or lottery scheme. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various assortments, nor does it include all of the details of the several plans which respondent has been or is using in the sale and distribution of candy by lot or chance.

(*a*) One assortment consists of a box or boxes of candy bars in conjunction with a device commonly called a push card. The push card contains 100 partially perforated disks and on the face of each of said disks is printed the word "push." Concealed within the said disks are numbers which are effectively concealed from purchas-

ers and prospective purchasers until a push or selection has been made and the selected disks pushed or separated from the card. Sales are 5 cents each. The following legend appears on the face of said card:

5¢ WINNER BAR ASSORTMENT 5¢

(No blanks)

Number 100–receives 5 Douglas Bars

Number 50–receives 3 Douglas Bars

NOS. 5–15–25–35–45–55–65–75–85 receive
—2 Douglas Bars

All other numbers receive—1 Douglas Bar

The sales of respondent's candy by means of said push card are made in accordance with the above described legend or instructions. Said pieces or bars of candy are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives one or more pieces or bars of candy for the amount of money paid is thus determined wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of candy along with push cards, involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

(*b*) Another of said assortments consists of a box or boxes of candy bars in conjunction with a device commonly called a punchboard. The said punchboard contains 300 holes into which have been inserted slips of paper and on the slips of paper certain words or phrases have been printed. Such words or phrases are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the selected slip punched or separated from the board. Each purchaser is entitled to one bar of candy for the amount of money paid, but purchasers who punch slips containing certain words or phrases which correspond to words or phrases appearing at the top of said board are entitled to, and receive, additional bars of candy without additional cost. Sales are 5 cents each. The following legend appears on the face of said board:

PLAY BALL

All Plays Receive
Douglas Bars

ONLY

Home Run receives 5 Bars

3 Base Hit receives 5 Bars

2 Base Hit receives 4 Bars

1 Base Hit receives 2 Bars

Stolen Base receives 2 Bars

All Other Plays receive 1 Bar

Batter Up Make A Hit

The sales of respondent's candy by means of said punchboard are made in accordance with the above described legend or instructions. Said pieces or bars of candy are allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives one or more pieces or bars of candy for the amount of money paid is thus determined wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of candy along with 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 candy directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plans aforesaid. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of its candy in accordance with the sales plans 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 the criminal laws.

PAR. 4. The sale of candy to the purchasing public by the methods and plans hereinabove set forth involves a game of chance or the sale of a chance to procure additional pieces of candy without 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 methods or any method involv-

ing a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of its candy and the element of chance involved therein and are thereby induced to buy and sell respondent's candy in preference to candy of said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent because of said game of chance has a tendency and capacity to and does unfairly divert trade in commerce between and among 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. 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 the 13th day of June A. D., 1939, issued and thereafter served its complaint in this proceeding upon the respondent, Douglas Candy Co., a corporation, charging it with unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. After the issuance of said complaint and filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of the complaint by John C. Landis, attorney for the respondent, before Miles J. Furnas, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, and

briefs in support of the complaint and in opposition thereto (oral argument not being requested), and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Douglas Candy Co. is a corporation organized and doing business under the laws of the State of Missouri, and having its principal place of business in the city of St. Joseph, in said State.

PAR. 2. Respondent, for some time last past, has been, and now is, engaged in the manufacture and sale of candy, and its distribution to wholesale and retail dealers and jobbers, and causes its said product, when sold, to be shipped from its principal place of business to purchasers thereof located in various States of the United States.

PAR. 3. Respondent, in the conduct of its business as set forth in paragraph 2 hereof, has been, and now is, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy in commerce between and among various States of the United States.

PAR. 4. Respondent, in the sale and distribution of its merchandise as described in paragraph 2 hereof, has furnished and furnishes to the purchasers thereof various devices and plans of merchandising same which involve the operation of games of chance, gift enterprises, or lottery schemes, by means of which said merchandise is sold and distributed to the ultimate consumer wholly by lot or chance. Typical of the methods used by the respondent are the following:

(*a*) One of the respondent's assortments consists of a number of candy bars, together with a device commonly called a "push card." This push card bears the caption:

5¢ WINNER BAR ASSORTMENT 5¢

(No Blanks)

Number 100 receives	5 Douglas Bars
Number 50 receives	3 Douglas Bars
Nos. 5–15–25–35–45–55–65–75–85 receive	2 Douglas Bars
All Other Numbers receive	1 Douglas Bar

Below this heading are ranged one hundred partially perforated disks, for which pushes are sold at 5 cents each; over each disk appears a feminine name and concealed beneath the disk is a number which is

not disclosed until the disk is pushed out; the number revealed entitles the purchaser of the push to the amount of candy indicated in the above-described caption.

(*b*) Another of respondent's combinations consists of a number of candy bars, together with a device commonly called a "punchboard," which bears the following caption:

PLAY BALL

ALL PLAYS—RECEIVE DOUGLAS BARS ONLY

Home Run receives	5 Bars
Three Base Hit receives	5 Bars
Two Base Hit receives	4 Bars
One Base Hit receives	2 Bars
Stolen Base receives	2 Bars
All Other Plays receive	1 Bar

(with illustrations of two ball players and the additional words):

Batter Up Make a Hit

Below this caption are ranged 300 covered tubes, concealed within each of which is a slip of paper bearing certain printed words or phrases which are not disclosed until the cover is punched and the slip is withdrawn; these punches are sold at 5 cents each and each purchaser is entitled to 1 bar of candy, but the purchaser who punches out a slip containing words or phrases which correspond with 1 of the 5 specifically named awards appearing in the caption receives the number of bars there indicated, without additional cost.

(*c*) Another of respondent's combinations consists of a number of candy bars, together with a punchboard bearing the following caption:

BASKET BALL

Play 5¢ Play

Tip-Off Goal, rec's	6 Bars
Set Play Goal rec's	3 Bars
Rebound Goal rec's	2 Bars
Side Court Goal rec's	2 Bars
Long Shot Goal rec's	2 Bars
Free Throw Goal rec's	2 Bars
All Other Plays rec	1 Bar

Make a Goal

Under this caption are ranged 300 covered tubes, concealed within each of which is a slip of paper bearing certain printed words or phrases which are not disclosed until the cover is punched and the slip is withdrawn. Each of these punches is sold for 5 cents, and each purchaser is entitled to 1 bar of candy, but the purchaser punch-

ing out a slip containing words or phrases which corresponds with 1 of the 6 specifically named awards appearing in the caption receives the number of bars there indicated, without additional cost.

PAR. 5. Respondent's salesman has urged the use of respondent's "boards" because they assist in the sale of the candy. The use of said boards does, in fact promote such sales.

PAR. 6. Respondent, by its sales methods hereinbefore described, places in the hands of others various devices to be used in the distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme, and by the use of such devices said merchandise is distributed to the ultimate consumer wholly by lot or chance, and respondent's said sales methods are contrary to the established public policy of the Government of the United States.

PAR. 7. During all of the time herein mentioned, respondent has been in competition with other manufacturers and distributors of candy who are engaged in commerce between and among various States of the United States, and who are unwilling to use, and do not use, in the distribution of their merchandise, any method involving a game of chance, gift enterprise, or lottery scheme; and as a result of respondent's said methods, trade has been unfairly diverted from such competitors to the respondent.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission heretofore duly designated by it, in support of the allegations of said complaint, no evidence being offered in opposition thereto, briefs filed herein, 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 Douglas Candy Co., its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and

distribution of candy or any other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy or any other merchandise so packed or 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 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 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

S. & K. SALES, INC.

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

Docket 3769. Complaint, Apr. 19, 1939—Decision, Apr. 14, 1941

Where a corporation engaged in interstate sale and distribution of tapestries, neckties, pipes, knives, fountain pens, and other articles of merchandise, to jobbers, wholesalers, and retailers, and in distributing circulars illustrating and explaining its plans and devices for the sale thereof—

Furnished to purchasers along with such merchandise various plans and devices which involved the operation of games of chance, gift enterprises, or lottery schemes in sale or distribution thereof to ultimate consumers, typical "deals" including, respectively, 12 neckties with bands of heavy paper or cardboard to be arranged by the retailer to enfold the narrow part of the tie, attached to pull tabs, separation of which disclosed particular amount, ranging from 1 cent to 25 cents, purchaser was to pay for tie, and 12 tapestry table covers, together with a punch card for use in sale thereof, under a plan by which the number secured by chance determined amount to be paid therefor, so placing, thereby, in the hands of others various devices involving chance or lottery schemes or games for distribution of its products, whereby they were distributed to ultimate consumers wholly by lot or chance;

With the result that trade was thereby diverted to it from competitors who are unwilling to and do not use any such method:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors, contrary to the established public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

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

Mr. L. P. Allen, Jr. and *Mr. William L. Pencke*, for the Commission.

McCarthy, Morris, Smith & Sparrow, of St. Louis, 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 S. & K. Sales, 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, S: & K. Sales, Inc., is a corporation organized and existing under the laws of the State of Missouri, with its principal office and place of business located at 104 North Broadway, St. Louis, Mo. Respondent is now and for some time last past has been engaged in the sale and distribution of tapestries, neckties, pipes, knives, fountain pens, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be transported from its aforesaid place of business in Missouri 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 corporations and with partnerships and individuals engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent in soliciting the sale of and in selling and distributing its merchandise furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumer thereof wholly by lot or chance. Certain of said devices and plans are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various devices and plans nor does it include all of the details of the several devices and plans which respondent has been or is using in the sale and distribution of its said merchandise by lot or chance:

(*a*) Respondent distributes and has distributed to the purchasing and consuming public certain literature and instructions, including among other things push cards, illustrations of its merchandise and circulars explaining respondent's plan of selling and distributing merchandise to the purchasing and consuming public. One of respondent's push cards bears 12 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 purchaser pays in cents the amount of the number punched from the said card and receives an article of merchandise for the money expended. The numbers range from 1 to 39 and are effectively concealed within the said disk until it is pushed or separated from the card. The push cards bear legends as follows:

EVERY PUNCH WINS
No Blanks
1¢ to 39¢
Pay What You Punch—
From 1¢ to 39¢ No Higher
EVERY PLAY WINS

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends. The amount said purchasers are to pay for said articles of merchandise is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said instructions and other printed matter for use in the sale and distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all said merchandise by means of said push card is the same as that hereinabove described, varying only in detail.

(*b*) Another device used by respondent in the sale and distribution of its said neckties consists of 12 neckties, along with 12 bands of cardboard, which are designed to be and are folded around the narrow portion of each necktie. Attached to said bands of cardboard are pull tabs, which when pulled or separated from the bands of cardboard reveal the amount the purchaser is to pay for the necktie. These amounts range from 1 cent to 25 cents and such numbers are effectively concealed from the purchaser or prospective purchaser until the pull tab is pulled or separated from the said band of cardboard.

Sales of respondent's neckties are made in accordance with the plan just described and the amount to be paid by purchaser for said neckties is thus determined wholly by lot or chance. The respondent furnishes and has furnished various pull tab devices for use in the sale and distribution of its neckties by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of said neckties by means of said pull tab device 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 and pull tab devices use the same in purchasing, selling, and distributing respondent's merchandise, in accordance with the aforesaid sales plans. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plans or methods is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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

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

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 19th day of April, A. D., 1939, issued and thereafter served its complaint in this proceeding upon the respondent, S. & K. Sales, Inc., a corporation, charging it with 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 L. P. Allen, Jr., and William L. Pencke, attorneys for the Commission, and in opposition to the allegations of the complaint by M. X. Morris, attorney for the respondent, before Miles J. Furnas, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding. 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 being filed by respondent and no oral argument 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, S. & K. Sales, Inc., is a corporation organized and doing business under the laws of the State of Missouri, and having its principal office and place of business in the city of St. Louis, in said State.

Par. 2. Respondent, for some time last past has been, and now is, engaged in the sale and distribution to jobbers, wholesalers, and retailers, of tapestries, neckties, pipes, knives, fountain pens and other articles of merchandise, and causes its said products, when sold, to be shipped from its principal place of business to purchasers thereof located in various States of the United States.

Par. 3. Respondent, in the conduct of its business as set forth in paragraph 2 hereof, has been and now 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 various States of the United States.

PAR. 4. Respondent, in the sale and distribution of its merchandise described in paragraph 2 hereof, has furnished and furnishes to purchasers thereof various plans and devices which involve the operation of games of chance, gift enterprises, or lottery schemes, by means of which said merchandise is sold or distributed to the ultimate consumers. Typical of the methods used by respondent are the following:

(*a*) One of respondent's "deals" consists of twelve neckties with bands of heavy paper or cardboard to be arranged by the retailer to enfold the narrow part of the necktie; attached to said bands are "pull-tabs" which, when the ends are pulled and the tab separated from the band, discloses the amount the purchaser is to pay for the necktie; these amounts range from 1 cent to 25 cents and are effectively concealed until the tab has been pulled and separated from the band.

(*b*) Another of respondent's "deals" consists of twelve tapestry table covers and a "punch card" bearing the following caption:

Every Punch Wins No Blanks
1¢ to 39¢ Pay What You Punch—
From 1¢ to 39¢ No Higher
Every Play Wins

Ranged beneath this caption are 12 disks, each covering a perforation in the card; these perforations are also covered on the reverse side by twelve disks; on each of the face disks is printed the word "Push", and on the under side of these face disks, effectively concealed until the disk is pushed and removed from the card, is a number which indicates the amount to be paid in cents for the tapestry.

Other items of respondent's merchandise are sold by means of like or similar plans and devices.

PAR. 5. Respondent, in soliciting the sale of its merchandise "deals," has distributed and distributes to prospective or potential customers circulars illustrating and explaining its plans, methods and devices for the sale of its merchandise as set forth in paragraph 4 hereof.

PAR. 6. Respondent, by its sales methods hereinbefore described, places in the hands of others various devices which involve games of chance, gift enterprises, or lottery schemes to be used in the distribution of its merchandise, and by the use of said devices, said merchandise is distributed to the ultimate consumers wholly by lot or chance.

PAR. 7. During all the time herein mentioned respondent has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution, in commerce between

and among various States of the United States, of merchandise similar to that sold by the respondent, and who are unwilling to use, and do not use, in the sale and distribution of their merchandise, any method involving a game of chance, gift enterprise or lottery scheme; and as a result of respondent's said methods, trade has been diverted from such competitors to the respondent.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondent's competitors and are contrary to the established public policy of the Government of the United States of America, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and other evidence taken before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, brief filed herein by the attorney for the Commission (no brief being filed by respondent and oral argument not requested); and the Commission having made its findings as to the facts and its conclusion that the respondent, S. & K. Sales, Inc., a corporation, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, S. & K. Sales, Inc., its officers, directors, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of tapestries, neckties, pipes, knives, fountain pens or any other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Selling or distributing any merchandise so packed or 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 push or pull cards, pull tabs, punchboards or other lottery devices either with assortments of merchandise or separately, which said push or pull cards, pull tabs, punchboards or 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 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

SAKS & COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 3456. Order, Apr. 15, 1941

Modified order in proceeding in question, in which original order issued on Apr. 3, 1940, 30 F. T. C. 898, and in which, following the filing of petition for review in the Circuit Court of Appeals for the Second Circuit to set aside such order, and the filing in the court by the Commission of a transcript of the entire record, parties executed a stipulation by the terms of which respondent agreed to dismiss its petition and the Commission agreed, thereupon, to set aside its said order, in lieu thereof, to make, enter, and serve a modified order as therein provided, and court accordingly, on motion of respondent, dismissed said petition, and Commission set aside its aforesaid order [1]—

Requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of its furs or fur products or textile fabrics, including women's dresses and wearing apparel, to forthwith cease and desist from misrepresenting (1) customary worth, value, and prices of its furs or fur products, and (2) as new or "brand new" any fur coat not in fact new, and from using (1) unqualified descriptive term "satin," etc., to describe, etc., any fabric or product not composed wholly of silk, product of cocoon of the silkworm, and (2) term "silk," etc., to describe, etc., any fabric or product not composed wholly of silk, as aforesaid; as in said order in detail set forth, and subject to provisos therein stated in connection with use of aforesaid terms.

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

Mr. Robert Mathis, Jr. for the Commission.

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

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before Edward E. Reardon, Esq., an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Robert Mathis, Jr., Esq., counsel for the Commission, and by Horace G. Hitchcock, Esq., of the firm of Chadbourne, Wallace, Parke & Whiteside, counsel for the respondent, and the Commission

[1] See *post*, p. 1648.

having made its findings as to the facts and its conclusion that said respondent had violated the provisions of the Federal Trade Commission Act, and having, on April 3, 1940, issued and, on April 4, 1940, served upon the respondent its order to cease and desist from said violations of said act; and said respondent, on June 3, 1940, having petitioned the United States Circuit Court of Appeals for the Second Circuit to review and set aside said order to cease and desist; and the Commission having thereafter certified and filed in said Court a transcript of the entire record in the proceeding theretofore pending before it, in which said order to cease and desist was entered; and said respondent having filed in said Court a printed transcript of said record and its brief; and the parties having, on March 28, 1941, executed a stipulation by the terms of which said respondent agreed to dismiss its said petition for review, and said Commission agreed, upon the dismissal of said petition for review, to set aside its said order to cease and desist issued on April 3, 1940, and in lieu thereof to make, enter, and serve upon respondent a modified order to cease and desist, as provided in said stipulation; and said Circuit Court of Appeals, on April 2, 1941, on motion of said respondent, having entered its order dismissing said petition for review; and the Commission having set aside its said order to cease and desist issued on April 3, 1940; and being fully advised in the premises;

It is ordered, That the respondent, Saks & Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its furs or fur products or its textile fabrics, including women's dresses and women's wearing apparel, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the customary or regular worth or value of any furs, or fur products made in whole or in part of fur, prices and values which are in excess of the price at which such products are regularly and customarily sold in the normal and usual course of business.

2. Representing as new or "brand new" any fur coat which is not in fact a new fur coat.

3. Using the unqualified descriptive term "satin," or any other descriptive terms indicative of silk, to describe, designate, or in any manner refer to any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, provided, however, that when said words or descriptive terms are used truthfully

to designate or describe the type of weave, construction or finish, such words must be qualified by using in connection and conjunction therewith in letters of at least equal size and conspicuousness a word or words clearly and accurately naming or describing the fibers or materials from which said products are made.

4. Using the term "silk," or any other term or terms of similar import or meaning indicative of silk, to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, provided, that in the case of a fabric or product composed in part of silk and in part of materials other than silk, such term or similar terms may be used as descriptive of the silk content when immediately accompanied by a word or words accurately describing and designating such other materials.

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

RAMSDELL PACKING 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 4355. Complaint, Oct. 24, 1940—Decision, Apr. 15, 1941

Where a corporation engaged in packing, processing and canning sardines at its Maine plants, and in interstate sale and distribution thereof, (1) in some instances through brokers employed as its selling agents to whom it paid a brokerage fee or commission usually amounting to 5 percent of the invoice price on sales, and (2) in other instances directly to purchasers, including some of its brokers buying for their own account—

(*a*) Granted and allowed brokerage fees and commissions, and allowances and discounts in lieu thereof, in substantial amounts to certain of its customers, through selling its said product direct to some customers at a price reflecting a reduction from that at which it was currently selling such sardines to other customers in an amount equivalent to brokerage currently being paid by it to its brokers for sales to such other customers; and

(*b*) Granted and allowed brokerage fees and commissions, and allowances and discounts in lieu thereof, in substantial amounts to certain customers, through selling to customers, sales to whom were effected through brokers to whom it did not pay, customarily, full brokerage, at a price reflecting a reduction from the prices at which it was currently selling its product to other customers in an amount approximately equal to the difference between such full brokerage and that actually paid:

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 sardines from it, as above set forth, said corporation violated subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent, named in the caption hereof, and hereinafter more particularly described, since June 19, 1936, has violated and is now violating the provisions of subsection (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), issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Ramsdell Packing Co., is a corporation organized and existing under and by virtue of the laws of the State

of Maine, and has its principal office and place of business located at Rockland, Maine.

PAR. 2. The respondent is engaged in the business of selling sardines, which it has packed, processed and canned at two canning plants which it operates in the State of Maine, one at Rockland and the other at Portland.

In some instances sales of such sardines are effected through brokers who are employed by respondent as its selling agents. In other instances such sardines are sold by respondent directly to purchasers, among which class of purchasers are some of respondent's brokers who on occasions purchase sardines for their own account for resale. When sales of sardines are effected through brokers, respondents pays to such brokers a brokerage fee or commission which usually amounts to 5 percent of the price at which respondent invoices such sardines to the purchasers thereof.

PAR. 3. In the course and conduct of its said business since June 19, 1936, respondent has sold and distributed sardines in commerce between and among the various States of the United States and the District of Columbia, in each of the manners set forth in paragraph 2 hereof, and as a result of such sales, has caused sardines to be shipped and transported from its said canning plants in the State of Maine across State lines to the respective purchasers thereof, and there has been at all times mentioned herein a continuous current of trade and commerce in sardines across State lines between respondent's canning plants and the purchasers of such sardines.

PAR. 4. Since June 19, 1936, in connection with sales of sardines in commerce as above alleged and described, respondent has granted and allowed brokerage fees and commissions and allowances and discounts in lieu thereof in substantial amounts to certain of its customers.

Among the methods employed by respondent in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to such customers are the following:

1. To some of its customers, the sales to whom are effected directly by respondent, respondent grants an allowance or discount in lieu of brokerage by selling sardines to such customers at a price reflecting a reduction from the prices at which respondent is currently selling such sardines to other customers of an amount representing brokerage currently being paid by respondent to its brokers for effecting sales of sardines to other purchasers thereof.

2. To other of its customers, the sales to whom are effected through brokers to whom respondent does not pay the full brokerage customarily and usually paid by respondent to its brokers for effecting

sales of sardines, the respondent grants an allowance or discount in lieu of brokerage, by selling sardines to such customers at a price reflecting a reduction from the prices at which respondent is currently selling sardines to other customers of brokerage in an amount representing and approximately equal to the difference between the full brokerage customarily paid by respondent to its brokers for effecting such sales and the amount of brokerage actually paid by respondent to its brokers for effecting said sales.

PAR. 5. The aforesaid acts of the respondent constitute a violation of the provisions of subsection (c) of section 2 of the above-mentioned Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, 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 October 24, 1940, issued and served its complaint in this proceeding upon the party respondent named in the caption hereof, charging said respondent with violating the provisions of subsection (c) of section 2 of said act, as amended.

After the issuance of said complaint, the respondent filed its answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ramsdell Packing Co., is a corporation organized and existing under and by virtue of the laws of the State of Maine, and has its principal office and place of business located at Rockland, Maine.

PAR. 2. The respondent is engaged in the business of selling sardines, which it has packed, processed, and canned at two canning

plants which it operates in the State of Maine, one at Rockland and the other at Portland.

In some instances sales of such sardines are effected through brokers who are employed by respondent as its selling agents. In other instances such sardines are sold by respondent directly to purchasers, among which class of purchasers are some of respondent's brokers who on occasions purchase sardines for their own account for resale. When sales of sardines are effected through brokers, respondent pays to such brokers a brokerage fee or commission which usually amounts to 5 percent of the price at which respondent invoices such sardines to the purchasers thereof.

PAR. 3. In the course and conduct of its said business since June 19, 1936, respondent has sold and distributed sardines in commerce between and among the various States of the United States and the District of Columbia, in each of the manners set forth in paragraph 2 hereof, and as a result of such sales, has caused sardines to be shipped and transported from its said canning plants in the State of Maine across State lines to the respective purchasers thereof, and there has been at all times mentioned herein a continuous current of trade and commerce in sardines across State lines between respondent's canning plants and the purchasers of such sardines.

PAR. 4. In the course and conduct of its business as aforesaid the respondent, Ramsdell Packing Co., a corporation, since June 19, 1936, has granted and allowed brokerage fees and commissions and allowances and discounts in lieu thereof in substantial amounts to certain of its customers. Among the methods employed by respondent in granting and allowing brokerage fees and commissions and allowances and discounts in lieu thereof to such customers are the following:

1. To some customers, the sales to whom are effected directly by respondent, respondent sells sardines at a price reflecting a reduction from the price at which respondent is currently selling such sardines to other customers in an amount equivalent to brokerage currently being paid by respondent to its brokers for effecting sales of sardines to such other customers.

2. Respondent sells sardines through brokers to other customers, and on some of such sales respondent does not pay the full brokerage customarily and usually paid by respondent for effecting such sales of sardines, and on such sales the respondent grants to such customers a price reflecting a reduction from the prices at which respondent is currently selling sardines to other customers in an amount equivalent to brokerage and approximately equal to the difference between the full brokerage customarily paid by respondent to its brokers for effect-

ing such sales and the amount of brokerage actually paid by respondent to its brokers for effecting said sales.

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 sardines from respondent, as set forth in paragraph 4 hereof, the respondent, Ramsdell Packing Co., a corporation, has violated and is violating subsection (c) 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 and the answer duly filed by respondent Ramsdell Packing Co., a corporation, which answer admits all of the material allegations of the complaint to be true and waives the taking of further evidence and all other intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion herein that said respondent, Ramsdell Packing Co., a corporation, has violated the provisions of "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

It is ordered, That the respondent, Ramsdell Packing Co., a corporation, its officers, representatives, agents, and employees, in connection with the sale and distribution of sardines, in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

1. Selling sardines to customers, the sales to whom are effected directly by respondent, at a price reflecting a reduction from the prices at which respondent is currently selling such sardines to other customers in an amount equivalent to brokerage currently being paid by respondent to its brokers for effecting sales of sardines to other purchasers thereof.

2. Selling sardines to customers, the sales to whom are effected through brokers to whom respondent does not pay the full brokerage customarily and usually paid by respondent to its brokers for effecting sales of sardines, at a price reflecting a reduction from the prices at which respondent is currently selling sardines to other customers in an amount equivalent to brokerage and approximately equal to

the difference between the full brokerage customarily paid by respondent to its brokers for effecting such sales and the amount of brokerage actually paid by respondent to its brokers for effecting said sales.

3. From continuing or resuming the practices forbidden in paragraphs 1 and 2 hereof, or by any other means paying or granting, directly or indirectly, to buyers on their own purchases of sardines any commission, brokerage, or other compensation, or any allowance or discount in lieu thereof.

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

MEMORANDUM

The Commission, as of the same date, made findings and orders likewise involving violation of the provisions of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, in connection with the sale and distribution in interstate commerce of sardines packed, processed, and canned by the respective respondents, in twelve other cases.

In one of these, namely, the case of Union Sardine Co., Docket 4413, reported in full, *infra*, at p. 1194, there was a variance from the facts in the Ramsdell case above, in that, as there found, there was involved only the first of the two discriminatory practices set forth in the principal case.

Complaints, findings, and orders in the other 11 cases (in which complaints issued on October 24, 1940, in Dockets 4356 to 4362, and on Dec. 13, 1940, in Dockets 4410–4412 and 4414), were similar to those in the principal case above reported in full, the respondents and docket numbers, along with their principal place of business, and the canning plants operated by them, being as follows:

Seaboard Packing Co., Docket 4356, Lubec, Maine, with plants at Lubec, Portland, and Robbinston, Maine.

Machiasport Canning Co., Docket 4357, Machiasport, Maine, with plants at Machiasport, and Eastport, Maine.

Holmes Packing Corporation, Docket 4358, Eastport, Maine, with plant in Eastport, Maine.

R. J. Peacock Canning Co., Docket 4359, Lubec, Maine, with plants at Lubec, Portland and Eastport, Maine.

Memorandum

JONESPORT PACKING CO., Docket 4360, West Jonesport, Maine, with plant at West Jonesport, Maine.

SUNSET PACKING CO., INC., Docket 4361, West Pembroke, Maine, with plant at West Pembroke, Maine.

STINSON CANNING CO., etc., Docket 4362, Prospect Harbor, Maine, with plants at Prospect Harbor and South West Harbor, Maine.

ROYAL RIVER PACKING CORPORATION, Docket 4410, Yarmouth, Maine, with plant at Yarmouth, Maine.

BELFAST PACKING CO., Docket 4411, Belfast, Maine, with plant at Belfast, Maine.

NORTH LUBEC MANUFACTURING AND CANNING CO., Docket 4412, North Lubec, Maine, with plant at North Lubec, Maine.

BOOTH FISHERIES CORPORATION, Docket 4414, Chicago, Ill., operating through its wholly-owned subsidiary, BOOTH FISHERIES SARDINE CO., Lubec. Maine, with plant at Lubec, Maine.

The Commission was represented in the foregoing 11 cases by *Mr. Edward S. Ragsdale.*

Booth Fisheries Corporation was represented by *Levinson, Becker, Peebles & Swiren,* of Chicago, Ill.

IN THE MATTER OF

UNION SARDINE 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 4413. Complaint, Dec. 13, 1940—Decision, Apr. 15, 1941

Where a corporation engaged in packing, processing, and canning sardines at its Maine plant, and in interstate sale and distribution thereof, (1) in some instances through brokers employed as its selling agents to whom it paid a brokerage fee or commission usually amounting to 5 percent of the invoice price on sales, and (2) in other instances directly to purchasers, including some of its brokers buying for their own account—

Granted and allowed brokerage fees and commissions, and allowances and discounts in lieu thereof, in substantial amounts to certain of its customers, through selling its said product direct to some customers at a price reflecting a reduction from that at which it was currently selling such sardines to other customers in an amount equivalent to brokerage currently being paid by it to its brokers for sales to such other customers:

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 sardines from it, as above set forth, said corporation violated subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, since June 19, 1936, has violated and is now violating the provisions of subsection (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), issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Union Sardine Co., is a corporation organized and existing under and by virtue of the laws of the State of Maine, and has its principal office and place of business located at Lubec, Maine.

PAR. 2. The respondent is engaged in the business of selling sardines which it has packed, processed, and canned at its canning plant which it operates in the city of Lubec, State of Maine.

In some instances sales of such sardines are affected through brokers who are employed by respondent as its selling agents. In other

instances such sardines are sold by respondent directly to purchasers, among which class of purchasers are some of respondent's brokers who on occasions purchase sardines for their own account for resale. When sales of sardines are effected through brokers, respondent pays to such brokers a brokerage fee or commission which usually amounts to 5 percent of the price at which respondent invoices such sardines to the purchasers thereof.

PAR. 3. In the course and conduct of its said business since June 19, 1936, respondent has sold and distributed sardines in commerce between and among the various States of the United States and the District of Columbia, in each of the manners set forth in paragraph 2 hereof, and as a result of such sales, has caused sardines to be shipped and transported from its said canning plants in the State of Maine across State lines to the respective purchasers thereof, and there has been at all times mentioned herein a continuous current of trade and commerce in sardines across State lines between respondent's canning plant and the purchasers of such sardines.

PAR. 4. Since June 19, 1936, in connection with sales of sardines in commerce as above alleged and described, respondent has granted and allowed brokerage fees and commissions and allowances and discounts in lieu thereof in substantial amounts to certain of its customers.

Among the methods employed by respondent in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to such customers are the following:

1. To some of its customers, the sales to whom are effected directly by respondent, respondent grants an allowance or discount in lieu of brokerage by selling sardines to such customers at a price reflecting a reduction from the prices at which respondent is currently selling such sardines to other customers of an amount representing brokerage currently being paid by respondent to its brokers for effecting sales of sardines to other purchasers thereof.

2. To other of its customers, the sales to whom are effected through brokers to whom respondent does not pay the full brokerage customarily and usually paid by respondent to its brokers for effecting sales of sardines, the respondent grants an allowance or discount in lieu of brokerage, by selling sardines to such customers at a price reflecting a reduction from the prices at which respondent is currently selling sardines to other customers of brokerage in an amount representing and approximately equal to the difference between the full brokerage customarily paid by respondent to its brokers for effecting

such sales and the amount of brokerage actually paid by respondent to its brokers for effecting said sales.

PAR. 5. The aforesaid acts of the respondent constitute a violation of the provisions of subsection (c) of section 2 of the above mentioned Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the act of Congress, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), the Federal Trade Commission on December 13, 1940, issued and served its complaint in this proceeding upon the party respondent named in the caption hereof, charging said respondent with violating the provisions of subsection (c) of section 2 of said act, as amended.

After the issuance of said complaint, the respondent filed its answer admitting certain material allegations of fact set forth in said complaint and denying others, and waiving all intervening procedure as to said facts, and expressly waiving the filing of briefs and oral argument.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Union Sardine Co., is a corporation organized and existing under and by virtue of the laws of the State of Maine, and has its principal office and place of business located at Lubec, Maine.

PAR. 2. The respondent is engaged in the business of selling sardines which it has packed, processed, and canned at its canning plant which it operates in the city of Lubec, State of Maine.

In some instances sales of such sardines are effected through brokers who are employed by respondent as its selling agents. In other instances such sardines are sold by respondent directly to purchasers, among which class of purchasers are some of respondent's brokers who on occasions purchase sardines for their own account for resale.

When sales of sardines are effected through brokers, respondent pays to such brokers a brokerage fee or commission which usually amounts to 5 percent of the price at which respondent invoices such sardines to the purchasers thereof.

PAR. 3. In the course and conduct of its said business since June 19, 1936, respondent has sold and distributed sardines in commerce between and among the various States of the United States and the District of Columbia, in each of the manners set forth in paragraph 2 hereof, and as a result of such sales, has caused sardines to be shipped and transported from its said canning plant in the State of Maine across State lines to the respective purchasers thereof, and there has been at all times mentioned herein a continuous current of trade and commerce in sardines across State lines between respondent's canning plant and the purchasers of such sardines.

PAR. 4. In the course and conduct of its business as aforesaid the respondent, Union Sardine Co., a corporation, since June 19, 1936, has granted allowances and discounts in lieu of brokerage fees and commission in substantial amounts to certain of its customers by selling sardines to some customers at a price reflecting a reduction from the price at which respondent is currently selling sardines of like grade and quality to other customers in an amount equivalent to brokerage currently being paid by respondent to its brokers for effecting sales of sardines to such other customers.

CONCLUSION

In granting and allowing brokerage fees and commission, or allowances and discounts in lieu thereof, to purchasers in connection with their respective purchases of sardines from respondent, as set forth in paragraph 4 hereof, the respondent, Union Sardine Co., a corporation, has violated and is violating subsection (c) 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 and the answer duly filed by respondent Union Sardine Co., a corporation, which answer admits all of the material allegations of the complaint to be true and waives the taking of further evidence and all other intervening procedure as to said facts and expressly waives the filing of briefs and oral argument, and the Commission having made its findings as

to the facts and conclusion herein that said respondent, Union Sardine Co., a corporation, has violated the provisions of "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That the respondent, Union Sardine Co., a corporation, its officers, representatives, agents, and employees, in connection with the sale and distribution of sardines in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

1. Selling sardines to customers, the sales to whom are effected directly by respondent, at a price reflecting a reduction from the prices at which respondent is currently selling such sardines to other customers in an amount equivalent to brokerage currently being paid by respondent to its brokers for effecting sales of sardines to other purchasers thereof.

2. From continuing or resuming the practices forbidden in paragraph 1 hereof, or by any other means paying or granting, directly or indirectly, to buyers on their own purchases of sardines any commission, brokerage, or other compensation, or any allowance or discount in lieu thereof.

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

IN THE MATTER OF

FRANK L. SINGER, TRADING AND DOING BUSINESS AS FRANK L. SINGER FUR COMPANY

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

Docket 4189. Complaint, July 16, 1940—Decision, Apr. 16, 1941

Where an individual dealer engaged in interstate purchase and sale of raw furs, by means of price lists similar in form to those of his principal competitors, and by circulars, folders, and booklets disseminated among trappers and dealers in the various States, in which were set forth his method of purchasing raw furs, the quality, grading classification of furs and the high prices and average prices paid therefor, all prices to be subject to market changes and buyer's classification—

(*a*) Represented that he would purchase the average or ordinary grade of furs at the prices offered for the highest quality or grade thereof, by emphasizing the highest price in the upper grades through such statements as "The Golden Rules has been my rule in buying furs all my life. It will be my rule in dealing with you," and "Beaver $33.00–$30.00 for extra large No. 1 down to $12.00–$7.00 for small No. 1," and others of similar tenor, with varying prices for other furs, including mink, skunk, raccoon, and muskrat; when in fact specimens of a character to be graded in the higher ranges of the top grades are rare, bulk of furs offered being of medium or low average, and said dealer had no intention of paying any higher sum than strict grading would require, but expected to pay trappers and dealers prices approximating those in the lower medium grades indicated in his said advertising matter;

Whereby trappers not skilled in fur grading technique were induced to ship to him, believing mistakenly that they would receive payment at highest prices quoted, but in fact received from him, frequently, prices substantially less than they might have obtained elsewhere; and

(*b*) Made misleading statements and representations therein relating to market conditions and the demand for certain grades and types of furs which he desired to purchase;

With effect of misleading and deceiving trappers and dealers in furs into the erroneous belief that aforesaid misrepresentations were true, and with result, because of such mistaken belief, that many trappers and dealers in furs, thereby depriving themselves of trading with other outlets, were induced to ship and sell to him substantial quantities of furs:

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. B. C. Wilson for the Commission.

Wise, Corlett & Canfield, 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 Frank L. Singer, an individual trading and doing business under the name Frank L. Singer Fur 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 Frank L. Singer is an individual trading and doing business under the name Frank L. Singer Fur Co., with his principal office and place of business located in the city of Peekskill, State of New York. Respondent is now, and for more than two years last past has been, engaged as a dealer in the purchase and sale of raw furs in commerce between and among the various States of the United States and in the District of Columbia. Respondent purchases said furs from trappers and dealers located at various points in the United States of America and causes same to be shipped and transported to him at his said place of business in the State of New York. Respondent causes his said products, when sold, to be transported from his 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 commerce between and among the various States of the United States and in the District of Columbia in said furs.

PAR. 2. In the course and conduct of his business in said commerce, as aforesaid, the respondent, by means of price lists, circulars, folders, and booklets disseminated among trappers and dealers located in the various States of the United States, represents to such trappers and dealers that he will pay certain specified prices for designated grades and qualities of furs and that certain market conditions exist as to particular kinds of furs.

Among and typical of the statements and representations so made and used are the following:

The Golden Rule has been my rule in buying furs all my life. It will be my rule in dealing with you.

Beaver $33.00–$30.00 for extra large No. 1 down to $12.00–$7.00 for small No. 1.

Mink $20.00–$18.00 for extra large No. 1 down to $7.00–$5.00 for No. 2 size and quality.

Skunk $3.00–$2.50 for extra large No. 1 down to .80–.15 for No. 2 size and quality.

Raccoon $9.00–$7.00 for extra large No. 1 down to $5.00–$1.00 for No. 2 size and quality.

Muskrat $2.00–$1.75 for extra large No. 1 down to $1.40–.40 for No. 2 size and quality.

PAR. 3. Through the use of the aforesaid statements and representations and others of similar import and meaning not herein set forth, respondent represents and implies to trappers and dealers in furs that he will pay approximately the sums indicated for the various grades and qualities of furs named and listed on such price lists and in said circulars, folders, and booklets. In truth and in fact, the sums quoted by the respondent in his advertising matter as the prices he will pay for designated furs are fictitious and are false, misleading, and deceptive for no such sums are paid to or realized by shippers of furs to the respondent. Respondent quotes such fictitious prices only for the purpose of inducing trappers and dealers to ship their furs to him, and without any intention or expectation of paying to such shippers the prices mentioned in said advertising matter, or any sums approximating such prices, but with the view and expectation that said shippers will dispose of their furs to him for only a portion, small in most instances, of the prices advertised by respondent because of the difficulty and expense incident to securing a return of the furs shipped to the respondent.

In many instances, trappers and dealers are induced to ship their furs to the respondent as a result of the fictitious prices quoted by him. Sales are made to the respondent by such shippers at prices much less than those quoted by the respondent and at prices less than such shippers could, in many instances, secure through other sources and which they would secure but for their having been misled and deceived by the fictitious prices quoted by the respondent.

PAR. 4. In addition to showing the purported prices which respondent represents in said advertising matter will be paid for various grades and qualities of furs, the respondent also makes many statements therein relating to market conditions and the demand for certain of the several grades and types of furs he desires to purchase. Many of the statements and representations made and used by respondent with respect to market conditions and the demand for certain grades and types of furs are false, misleading, and deceptive, and do not in any sense reflect the true market condition or the true demand for the grades and types of furs mentioned. As a result of the false, misleading, and deceptive statements and representations as to market conditions and the demand for certain grades and types of furs so made and used by the respondent, many trappers and dealers in furs

are induced to ship, and do ship, furs to the respondent and accept therefor sums less than they would realize from other sources and less than the sums quoted in the price lists used and circulated by the respondent.

PAR. 5. The use by the respondent of the practices and methods hereinabove set forth has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the trappers and dealers in furs into the erroneous and mistaken belief that the prices quoted in said advertising material are the approximate prices which will be paid by the respondent for furs shipped to him, and that the statements and representations made with respect to market conditions and the demand for certain grades and types of furs are true. As a result of such erroneous and mistaken belief engendered as aforesaid, many trappers and dealers in furs are induced to ship and sell to the respondent substantial quantities of furs.

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 16th day of July 1940, issued and subsequently served its complaint in this proceeding upon said respondent, Frank L. Singer, an individual trading and doing business under the name of Frank L. Singer Fur Co., charging him with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 23, 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 Wise, Corlett & Canfield, counsel for the respondent, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, 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 Frank L. Singer is an individual trading and doing business under the name Frank L. Singer Fur Co., with his office and principal place of business located in the city of Peekskill, State of New York. Respondent is now, and for more than two years last past has been, engaged as a dealer in the purchase and sale of raw furs in commerce between and among the various States of the United States and in the District of Columbia. Respondent purchases said furs from trappers and dealers located at various points in the United States of America and causes same to be shipped and transported to him at his said place of business in the State of New York. Respondent causes said products, when sold, to be transported from his 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 raw furs in commerce between and among the various States of the United States and in the District of Columbia in said furs.

PAR. 2. In the course and conduct of his business in said commerce, as aforesaid, respondent disseminated price lists, circulars, folders, and booklets among trappers and dealers located in the various States of the United States, setting forth his method of purchasing raw furs from said trappers and dealers, the quality, grading, classification of furs, and the high prices and the average prices paid for such stated grades and classifications. All prices so named in such publication are indicated to be subject to market changes and subject to buyer's classification. The form and style of the said price lists are similar to that generally employed by respondent's principal competitors. Among and typical of the statements and representations so made and used by the respondent in said price lists, circulars, folders, and booklets are the following:

The Golden Rule has been my rule in buying furs all my life. It will be my rule in dealing with you.

Beaver $33.00–$30.00 for extra large No. 1 down to $12.00–$7.00 for small No. 1.

Mink $20.00–$18.00 for extra large No. 1 down to $7.00–$5.00 for No. 2 size and quality.

Skunk 3.00–2.50 for extra large No. 1 down to .80–.15 for No. 2 size and quality.

Raccoon 9.00–7.00 for extra large No. 1 down to 5.00–1.00 for No. 2 size and quality.

Muskrat 2.00–1.75 for extra large No. 1 down to 1.40–.40 for No. 2 size and quality.

PAR. 3. Through the use of the aforesaid statements and representations and others of similar import and meaning respondent represents to trappers and dealers in furs that he will pay approximately the sums indicated for the various grades and quality of furs named and listed on such price lists and in said circulars, folders, and booklets. In truth and in fact, the prices quoted by the respondent in his advertising matter as the prices he will pay for designated furs are so displayed as to create the misleading impression that the sums that will be paid to or realized by shippers of furs to the respondent will approximate the high prices in the upper grades, whereas specimens of a character to be graded in said higher ranges of the top grades are in truth and in fact rare, the bulk of furs offered being of medium or low average. Respondent presents the advertising matter in this manner for the purpose of inducing trappers and dealers to ship their furs to him, and without any intention or expectation of paying to such shippers any higher sum than strict grading would require, but with the view and expectation that said shippers will dispose of their furs to him for prices which will approximate the average prices in the low or medium grades indicated on the said advertising matter.

Trappers not skilled in fur grading technique are induced to ship their furs to the respondent as the result of the emphasis respondent placed on the higher grades and prices quoted by him. After furs are shipped to the respondent by trappers under the mistaken belief that they will receive payment for them at the highest prices quoted, sales are made to the respondent by such shippers at prices lower than the highest prices quoted by the respondent. Shippers receive from respondent, in many instances, prices substantially less than they might have secured from other sources, but for their having been misled and deceived by respondent's said advertising matter into the erroneous and mistaken belief that they would receive the higher prices displayed and emphasized in said price lists for furs, regardless of grade or quality.

PAR. 4. In addition to emphasizing the highest price in the upper grades quoted by the respondent in said advertising matter, the

respondent also makes statements therein relating to market conditions and the demand for certain of the several grades and types of furs he desires to purchase. Many of the statements and representations made and used by the respondent do not truly reflect the market condition or the true demand for the grades and types of furs mentioned. As a result of the misleading statements and representations as to market conditions and the demand for certain grades and types of furs so made and used by the respondent, many trappers and dealers in furs are induced to ship, and do ship, furs to the respondent and deprive themselves of the opportunity of trading with other outlets.

PAR. 5. The use by the respondent of the practices and methods hereinabove set forth has had, and now has, the capacity and tendency to, and does, mislead and deceive trappers and dealers in furs into the erroneous and mistaken belief that the highest prices quoted in the said advertising material are the approximate prices which will be paid for furs shipped to respondent, that the statements and representations made with respect to market conditions and the demand for certain grades and types of furs are true. As a result of such erroneous and mistaken belief engendered as aforesaid, many trappers and dealers in furs are induced to ship and sell to the respondent substantial quantities of furs.

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 Wise, Corlett & Canfield, counsel for the respondent herein, and W. T. Kelley, Chief Counsel for the Commission, which provides among other things that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Frank L. Singer, an individual trading and doing business under the name of Frank L. Singer Fur Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the purchase of raw furs or the sale or distribution of raw furs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by means of price lists, circulars, folders, booklets, or by any other methods that respondent will pay to trappers or dealers in furs the sums indicated for the various grades of furs named and listed on such price lists and in said circulars, folders, and booklets, unless the respondent actually pays shippers of furs substantially the sums indicated for the various grades of furs named and listed on such price lists and other advertising matter.

2. Representing, through the use of price lists in which the prices offered for the highest quality or grade of furs are featured, emphasized, or stressed, or in any manner, that the average or ordinary grade of furs will be purchased at the prices offered by respondent for the highest quality or grade of furs.

3. Representing to trappers or dealers in furs that market conditions or other causes have created an unusual demand for certain types and grades of furs, and have caused or will cause an increase in prices paid to trappers and dealers for said types or grades of furs, when such market conditions or demand do not, in fact, exist.

4. Using price lists, or any other publication containing prices offered for furs, which feature, emphasize, or stress the prices offered by respondent for the finest grade or quality of furs in such a manner as to import or imply that such prices are paid by the respondent for the average or ordinary grades of furs.

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

CARLTON MILLS CO., INC.

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

Docket 4341. Complaint, Oct. 9, 1940—Decision, Apr. 17, 1941

Where a corporation engaged in manufacture of fabrics simulating various furs and wool materials, and in interstate sale and distribution thereof, and in supplying to garment manufacturers and retailers various labels to be attached to coats and other garments made from its said products—

(*a*) Represented that its fabrics, made to resemble and simulate the color, pattern, and texture of genuine Persian lamb, Karakul and Caracul peltries, and the garments manufactured therefrom, were made from such peltries or from wool taken from such animals, through setting forth on various labels supplied as aforesaid, together with depictions of one or more lambs, trade names "Genuine Babelamm," "Karagora," "Pelkara," "Bashkara Lamm," and "Kosva-Lam," and through setting forth on other labels names "Pershian Royal," "Rivalamm," "Volgalam," "Persia-laine," "Lam Kurl Persian," "Aristo Kurl," "Russkara," "Kurl Kohvar," and "Galykurl";

When in fact said fabrics and garments were composed of various combinations of ordinary wool, cotton, and rayon and were not, as indicated, composed of the peltries of Persian lamb, Karakul or Caracul, nor of wool taken therefrom, coats or other garments of which are markedly preferred by a substantial portion of the purchasing public over those made from wool or wool mixture; and

(*b*) Sold and distributed fabrics containing a substantial percentage of rayon, and supplied labels, as above indicated, to be attached to garments made therefrom, without disclosing presence of rayon, which chemically manufactured fiber or fabric, when so made as to simulate peltries aforesaid or wool thereof, is by the purchasing public practically indistinguishable therefrom, and is believed and accepted thereby as being such peltries or wool;

With result of placing in the hands of uninformed and unscrupulous manufacturers, jobbers, and retail dealers a means whereby they were enabled to mislead members of purchasing public, and with effect of deceiving a substantial portion of such public into the erroneous belief that its said products and garments manufactured therefrom were made from the peltries of certain animals or from wool taken therefrom, when such was not the fact, and of inducing said public, because of such mistaken belief, to purchase substantial quantities of its 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. Miles J. Furnas*, trial examiner.

Mr. Robert Mathis, Jr., for the Commission.

Mr. I. Arnold Himber, 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 Carlton Mills 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, Carlton Mills Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania and having its office, manufacturing plant, and principal place of business at 241 West Wyoming Avenue in the city of Philadelphia, State of Pennsylvania. Respondent also maintains a sales office at 51 Madison Avenue, in the city and State of New York.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the manufacture, sale, and distribution of certain fabrics which are designed to resemble or simulate in appearance various furs and wool materials. Respondent causes, and has caused, said products, when sold by it, to be transported from its place of business in the State of Pennsylvania to various 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. Respondent maintains and at all times mentioned herein has maintained a course of trade in its said fabrics in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its fabrics, respondent supplies to manufacturers and retail dealers various labels to be attached to coats and other garments manufactured from its fabrics, such labels being transported from respondent's said place of business to manufacturers and dealers located in various States of the United States and in the District of Columbia. Among the trade names used by the respondent on said labels are the following: "Genuine Babelamm," "Karagora," "Pelkara," "Bashkara Lamm," "Kosva-Lamm." On the above labels the respondent also causes to be placed a picturization or figure of one or more lambs. Other labels used by respondent bear the names: "Pershian Royal," "Rivalamm," "Volgalam," "Persia-laine," "Lam Kurl Persian," "Aristo Kurl,"

"Russkara," "Kurl Kohvar," and "Galykurl." All of said labels are used on fabrics which are so manufactured by respondent as to resemble and simulate in appearance the color, pattern and texture of genuine Persian Lamb, Karakul and Caracul peltries.

The foregoing trade names have the sound and appearance of various names which are associated in the minds of the purchasing public with Southeastern European and Southwestern Asiatic countries where the Persian Lamb, the Karakul and the Caracul are found. For example, "Basher" is the name of one of the Soviet Republics of Southeastern Russia, and "Kara" is the name of a boundary river flowing between certain parts of Europe and Asia. The word "laine" is the French word for wool.

When garments closely simulating or resembling the peltries of animals bear labels which suggest such animals or the country of their origin, and which are unaccompanied by words disclosing that such garments are in fact made of fabrics rather than peltries, such practice has the tendency and capacity to confuse, mislead, and deceive the purchasing public into the belief that such garments are made from peltries or from the wool of such animals.

Through the use of the aforesaid labels, and through the use of other words of similar import and meaning not herein set out, the respondent represents and has represented that its fabrics and the garments made therefrom are made from the peltries of Persian lambs, Karakuls and Caraculs, or from wool taken from such animals.

PAR. 4. The foregoing labels are false and misleading. In truth and in fact none of respondent's products nor the garments made therefrom are composed of the peltries of Persian lambs, Karakuls or Caraculs, nor of wool taken from such animals. All of said products are fabrics composed of ordinary wool and cotton, or ordinary wool and rayon, or cotton and rayon.

PAR. 5. There is a marked preference on the part of a substantial portion of the purchasing public for coats and other garments made from the peltries of Persian lambs, Karakuls or Caraculs, and from the wool of such animals, over garments made from fabrics composed of ordinary wool or composed of a mixture of ordinary wool and other materials.

PAR. 6. A further practice on the part of respondent is the sale and distribution of fabrics containing a substantial percentage of rayon, and the supplying of labels as aforesaid to be attached to garments made from such fabrics, without disclosing the rayon content of such fabrics and garments.

Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate the peltry or wool of the Persian lamb, the Karakul and the Caracul, and when so manufactured, rayon has the appearance of peltries or wool taken from such animals and is by the purchasing public practically indistinguishable therefrom. By reason of these qualities rayon, when so manufactured as to simulate the peltries or wool of such animals, and not designated as rayon, is believed and accepted by the purchasing public to be the peltries of such animals or wool taken from such animals.

PAR. 7. Through the use of the acts and practices herein set forth, the respondent also places in the hands of uninformed and unscrupulous manufacturers, jobbers, and retail dealers a means and instrumentality whereby such manufacturers, jobbers, and retail dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 8. The use by the respondent of the aforesaid acts and practices 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 respondent's products and the garments manufactured therefrom are made from the peltries of certain animals or from wool taken from such animals, when such is not the fact. Because of such erroneous and mistaken belief, the purchasing public has been induced to and has purchased substantial quantities of respondent's products.

PAR. 9. 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 9, 1940, issued and subsequently served its complaint in this proceeding upon respondent, Carlton Mills 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. The matter was set down for hearing and in the course of such hearing a stipulation as to the facts was entered into between Robert Mathis, Jr., attorney for the Commission, and I. Arnold Himber, attorney for the respondent, and such stipulation as to the facts was read into the record. The record,

which includes the stipulation as to the facts in the case, was duly filed in the office of the Commission. The respondent expressly agreed that the Commission may proceed 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. The respondent further 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 the said complaint, respondent's answer, and upon the record, including 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, Carlton Mills Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania and having its office, manufacturing plant, and principal place of business at 241 West Wyoming Avenue in the city of Philadelphia, State of Pennsylvania. Respondent also maintains a sales office at 51 Madison Avenue in the city and State of New York.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture, sale, and distribution of certain fabrics which are designed to resemble or simulate in appearance various furs and wool materials. Respondent causes, and has caused, said products, when sold by it, to be transported from its place of business in the State of Pennsylvania to various 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. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its fabrics, respondent supplies to garment manufacturers and retail dealers, various labels to be attached to coats and other garments manufactured from its fabrics, such labels being transported from respondent's said place of business to manufacturers and dealers located in the various States of the United States and in the District of Columbia. Among the trade names used by the respondent on said labels are the following: "Genuine Babelamm," "Karagora," "Pelkara," "Bashkara Lamm,"

and "Kosva-Lam." On the above labels, the respondent also causes to be placed a picturization or figure of one or more lambs. Other labels used by respondent bear the names "Pershian Royal," "Rivalamm," "Volgalam," "Persia-laine," "Lam Kurl Persian," "Aristo Kurl," "Russkara," "Kurl Kohvar," and "Galykurl." All of said labels are used on fabrics which are so manufactured by respondent as to resemble and simulate in appearance the color, pattern and texture of genuine Persian lamb, Karakul and Caracul peltries.

The foregoing trade names have the sound and appearance of various names which are associated in the minds of the purchasing public with Southeastern European and Southwestern Asiatic countries where the Persian lamb, the Karakul and the Caracul are found; for example, "Basher" is the name of one of the Soviet republics of Southeastern Russia and "Kara" is the name of a boundary river flowing between certain parts of Europe and Asia. The word "laine" is the French word for wool.

PAR. 4. The Commission finds that when garments closely simulating or resembling the peltries of animals bear labels which suggest such animals or the country of their origin and which do not adequately disclose that such garments are, in fact, made of fabrics rather than peltries, such practice has the tendency and capacity to confuse, mislead and deceive the purchasing public into the belief that such garments are made from peltries or from the wool of such animals.

Through the use of the aforesaid labels and through the use of other words of similar import and meaning, the respondent represents, and has represented, that its fabrics and the garments made therefrom are made from the peltries of Persian lambs, Karakuls or Caraculs, or from wool taken from such animals.

PAR. 5. In truth and in fact, none of respondent's products nor the garments made therefrom are composed of the peltries of Persian lambs, Karakuls or Caraculs, nor of wool taken from such animals. All of said products are fabrics composed of ordinary wool and cotton, or ordinary wool and rayon, or cotton and rayon, or various combinations of wool, cotton and rayon.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for coats and other garments made from the peltries of Persian lambs, Karakuls or Caraculs and from the wool of such animals, over garments made from fabrics composed of ordinary wool or composed of a mixture of ordinary wool and other materials.

PAR. 7. A further practice on the part of respondent is the sale and distribution of fabrics containing a substantial percentage of rayon, and the supplying of labels as aforesaid to be attached to garments made from such fabrics, without disclosing the rayon content of such fabrics and garments.

Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate the peltries or wool of the Persian lamb, the Karakul and the Caracul, and when so manufactured, rayon has the appearance of peltries or wool taken from such animals and is by the purchasing public practically indistinguishable therefrom. By reason of these qualities, rayon, when so manufactured as to simulate the peltries or wool of such animals and not designated as rayon, is believed and accepted by the purchasing public to be the peltries of such animals or wool taken from such animals.

PAR. 8. The Commission finds that through the use of the practices herein found, the respondent also places in the hands of uninformed and unscrupulous manufacturers, jobbers, and retail dealers a means and instrumentality whereby such manufacturers, jobbers, and retail dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 9. The use by the respondent of the aforesaid acts and practices 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 respondent's products and the garments manufactured therefrom are made from the peltries of certain animals or from wool taken from such animals when such is not the fact. Because of such erroneous and mistaken belief the purchasing public has been induced to purchase, and has purchased, substantial quantities 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, the answer of respond-

ent, and upon a stipulation as to the facts entered into between Robert Mathis, Jr., attorney for the Commission, and I. Arnold Himber, attorney for the respondent, and read into and made a part of the record 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, Carlton Mills Co., Inc., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its various textile fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Persian" or "Pershian" or any other words of similar spelling or phonetic sound to designate, describe, or in any way refer to any textile fabric which resembles or simulates in appearance, pattern, or design the peltry of a Persian Lamb, Karakul or Caracul.

2. Using or authorizing the use of the terms "Karagora," "Pelkara," "Bashkara Lamm," or "Kosva-Lam," separately or together with a pictorial design of a lamb or of any other wool-bearing animal, in connection with any description of or reference to any textile fabric which resembles or simulates in appearance, pattern or design the peltry of a Persian Lamb, Karakul or Caracul.

3. Using or authorizing the use of the terms "Pershian Royal," "Rivalamm," "Volgalam," "Persia-laine," "Lam Kurl Persian," "Russkara," "Kurl Kohvar," or "Galykurl" in connection with any description of or reference to any textile fabric which resembles or simulates in appearance, pattern or design the peltry of a Persian Lamb, Karakul or Caracul.

4. Using or authorizing the use of labels bearing any pictorial design of a lamb, or of any other wool-bearing animal, in connection with any description of, or reference to, any textile fabric which is not made from the wool of the animal so depicted.

5. Representing or implying in any manner that respondent's textile fabrics which resemble or simulate in appearance, pattern, or design the peltries of Persian Lambs, are made from the peltries of Persian Lamb, 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.

6. Using the terms "Babelamm," "Lam," or "Lamm" or any other term or terms of similar import or meaning to in any way describe, designate or refer to any fabric or product which is not composed

of wool obtained from lambs; provided, however, that in the case of fabrics or products composed in part of such wool and in part of other fibers, such terms may be used as descriptive of the wool content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof.

7. Advertising, offering for sale, or selling fabrics, or products composed in whole or in part of rayon without clearly disclosing the fact that such fabrics or products are composed of rayon; and when such fabrics or products are composed in part of rayon and in part of other fibers or material, all of such fibers or materials, including the rayon, shall be set forth in immediate connection with each other in letters of at least equal size and conspicuousness and shall truthfully describe and designate each constituent fiber or material thereof.

8. Supplying to others any labels or advertising material containing any of the representations prohibited herein.

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.

It is further ordered, That no provisions contained in this order shall be construed as authorizing or permitting, after July 14, 1941, the labeling of any wool product in any manner other than in strict conformity with the provisions of the "Wool Products Labeling Act of 1939."

IN THE MATTER OF

PASCAL 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 3768. Complaint, Apr. 19, 1939—Decision, Apr. 19, 1941

Where a corporation engaged in manufacture, and in substantial competitive interstate sale and distribution of its "Breatheasy" treatment, consisting of "Breatheasy" liquid medicinal preparation and atomizer or so-called "Nebulizer" for use in administering same, packed in small pasteboard box for offer and sale principally through drug stores—

(*a*) Represented, for a time, through advertising pamphlets circulated through the mail and by distributors, that its said "Breatheasy" was a remedy or cure for chronic bronchitis, heart disease and cardiac distress, gastric ulcer, serum rash, urticaria (hives), and other skin diseases of the erythematous and eczematous types, inflammation of the nose, throat, tonsils, larynx, and lungs, and neuralgia and neuritis, notwithstanding fact it was neither a remedy nor a competent treatment for said ailments, but, by reason of its epinephrine content, would be definitely harmful if used by a person suffering from high blood pressure, toxic goiter, diabetes or heart disease; and

(*b*) Represented thereafter, through advertisements in newspapers and magazines and other media, and through circular form letters, that said "Breatheasy" was a treatment for asthma and hay fever, and also, in said circular letters, for kindred ailments, and in small booklet included in package containing its preparation and device, that said product was recommended also for "other allergic conditions of the skin, such as eczema, urticarias, and rashes of similar nature," and that regular use thereof several times a day would tend to clear up those conditions and often make them disappear even when they had been present for years, notwithstanding fact said product did not constitute an effective treatment for chronic bronchitis or for urticaria or skin diseases of the erythematous and eczematous types; and

(*c*) Failed to set forth in its advertising literature other than in booklet aforesaid, and in its labels, facts material thereto through warning or notice that use thereof would be harmful if user was suffering from high blood pressure, toxic goiter, diabetes, or heart disease, and in its said booklet, not seen by prospect until after purchase had been made and package opened, only inadequately revealed such facts in inconspicuous statement on one of inside pages;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that its said representations were true, and that said preparation had therapeutic values represented, and into purchase of substantial quantities of its said product on account of such beliefs, thus induced, and with result that substantial trade was diverted unfairly to it from its competitors who do not misrepresent the therapeutic value of their products:

Held, That such representations and its acts and practices in relation thereto prior to amendment of Federal Trade Commission Act on March 21, 1938,

were to the prejudice and injury of the public and of its competitors, and constituted unfair methods of competition in commerce within intent and meaning of said act, and that said representations and acts and practices subsequent thereto, including failure to disclose possible harm in use of said product, were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within intent and meaning of said act as amended.

Before *Mr. John J. Keenan*, trial examiner.

Mr. Reuben J. Martin and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Clarence L. Gere and *Mr. Bert C. Ross*, of Seattle, Wash., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Pascal 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, Pascal Co., Inc., is a corporation created and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located in the Textile Tower Building, in the city of Seattle, within the State of Washington. Said respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution in commerce between and among the various States of the United States, of a medicinal preparation known as "Breatheasy" and of an atomizer or so-called "Nebulizer" for use in administering the preparation, "Breatheasy," which said preparation and nebulizer constitute together the "Breatheasy treatment". Respondent causes said preparation and said nebulizer, when sold, to be transported from its place of business in the State of Washington to its customers 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 "Breatheasy treatment" in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business, said respondent is in active and substantial competition with other corporations, partnerships, and individuals engaged in the sale and distribution in com-

merce between and among the various States of the United States and in the District of Columbia, of medicinal preparations and of atomizers or nebulizers for use in connection therewith.

PAR. 2. In the course and conduct of its said business as hereinbefore set out in paragraph 1, and for the purpose of inducing the purchase of said medicinal preparation "Breatheasy" and the said nebulizer for use in connection therewith, respondent has made and is now making false, deceptive, and misleading representations concerning the medical and therapeutic value of said medicinal preparation by means of advertising folders and circulars distributed generally throughout the United States, and by means of advertisements inserted in magazines and newspapers having a general circulation among the various States of the United States.

Among and typical of the false statements and representations which said respondent has used and is now using in its advertisements in magazines and newspapers, and in advertising folders and circulars is the following:

Breatheasy is beneficial according to authorities in asthma and chronic bronchitis, in heart disease and cardiac distress, in gastric ulcer, in serum rashes, urticaria (hives) and other skin diseases of the erythematous and eczematous types, in hay fever, in inflammation of the nose, throat, tonsils, larynx and lungs; and in neuralgia and neuritis. This by no means completes the list, but it suffices to show the enormous value of this substance elaborated by the adrenal glands and what may happen if they are deficient.

By means of said statement and others similar thereto, not herein specifically set out, respondent has represented and does now represent that its said preparation "Breatheasy" and the "Breatheasy treatment" is a cure or remedy and constitutes a competent and efficient treatment for chronic bronchitis, heart disease, cardiac distress, gastric ulcer, serum rashes, urticaria (hives) and other skin diseases of the erythematous and eczematous types, inflammation of the nose, throat, tonsils, larynx, and lungs and neuralgia and neuritis..

PAR. 3. In truth and in fact, respondent's representations and implications as to the therapeutic value of said medicinal preparation "Breatheasy" and the "Breatheasy treatment" are false and grossly exaggerated and greatly exceed those which might truthfully be made for said preparation and said treatment. "Breatheasy" and the "Breatheasy treatment" is not a cure nor a remedy nor does it constitute an effective or competent treatment for chronic bronchitis, heart disease, cardiac distress, gastric ulcer, serum rashes, urticaria (hives) and other skin diseases of the erythematous and eczematous types,

inflammation of the nose, throat, tonsils, larynx and lungs, and neuralgia and neuritis.

PAR. 4. In addition to the false and misleading statements hereinabove set forth, the respondent is also engaged in the dissemination of false advertisements in that the respondent fails to reveal to purchasers and prospective purchasers that the use of said medicinal preparation under the conditions prescribed, or under such conditions as are customary or usual, may in some cases cause injury to health. By reason of the fact that respondent's preparation consists of epinephrine or synthetic adrenalin, the use of said preparation would be definitely harmful if used by persons suffering from high blood pressure, toxic goiter, diabetes or heart disease.

PAR. 5. The use by the said respondent of the foregoing false and deceptive and misleading 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, representations, and advertisements are true and causes a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's preparation. 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 similar medicinal preparations or other preparations intended for similar usage who truthfully advertise the effectiveness and therapeutic value of their respective preparations. 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 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 19th day of April 1939 issued and thereafter served its complaint in this proceeding upon the respondent, Pascal Co., Inc., a corportion, charging it with the use of unfair methods of competition in commerce in violation of the said

act. After the issuance and service of the said complaint and the filing of respondent's answer thereto, a hearing was had at which testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission. The respondent was represented at the said hearing by Clarence L. Gere, Esq., who offered no testimony. The aforesaid testimony and evidence were introduced 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, and briefs in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Pascal Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, and its office and principal place of business are located in the Textile Tower Building, in the city of Seattle, State of Washington. The respondent is now, and has been since 1935, engaged in the manufacture and in the sale and distribution of a medicinal preparation, in liquid form, known as "Breatheasy" and an atomizer or so-called "Nebulizer" for use in administering said preparation. The two products are packed in a small pasteboard box in which form they are offered for sale and sold to the purchasing public principally through drug stores. Each box in which the aforesaid products are packed contains, among other things, directions for using the product and a pamphlet containing advertising matter and other information. The two products constitute what the respondent calls the "Breatheasy Treatment."

In the course and conduct of its aforesaid business respondent has caused, and now causes, its products, when sold, to be transported from its place of business in the State of Washington, to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in its said products in

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

In the course and conduct of its business, as aforesaid, respondent is now, and has been during all the time herein mentioned, in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of similar medicinal preparations and of atomizers or nebulizers for use in connection therewith 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 prior to January 1936 the respondent, in promoting the sale of its said products, caused certain advertising matter in pamphlet form, to be circulated through the mail and by distributors of respondent's products, throughout the various States of the United States and in the District of Columbia, in which certain false, deceptive, and misleading representations concerning the medicinal and therapeutic value of "Breatheasy" were made. Among and typical of the false and misleading statements and representations used as aforesaid is the following:

Breatheasy is beneficial, according to the authorities, in asthma and chronic bronchitis, in heart disease and cardiac distress, in gastric ulcer, in serum rash, urticaria (hives) and other skin diseases of the erythematous and eczematous types, in hay fever, in inflammation of the nose, throat, tonsils, larynx and lungs; and in neuralgia and neuritis. This by no means completes the list but it suffices to show the enormous value of this substance elaborated by the adrenal glands, and what may happen if they are deficient.

PAR. 3. By the use of the aforesaid representation in the manner set forth above, the respondent represented that "Breatheasy" is a remedy or cure for chronic bronchitis, heart disease and cardiac distress, gastric ulcer, serum rash, urticaria (hives) and other skin diseases of the erythematous and eczematous types; inflammation of the nose, throat, tonsils, larynx, and lungs; and neuralgia and neuritis. Based upon a stipulation entered into on the record herein, the Commission finds that in truth and in fact, "Breatheasy" is not a remedy or cure for the aforesaid ailments and disorders, and does not constitute an effective or competent treatment therefor.

PAR. 4. Respondent's product "Breatheasy" is a chemical compound containing racemic epinephrine hydrochloride in the strength of 2 percent plus in an isotonic salt solution with sodium vanoline sulfoxylate as a preservative or stabilizer. By reason of the fact that "Breatheasy" contains epinephrine, the use of said preparation would be definitely harmful if used by a person suffering from high blood pressure, toxic goiter, diabetes, or heart disease.

PAR. 5. From January 1936 until the present date, the respondent advertised "Breatheasy" as a treatment for asthma and hay fever. Said advertisements appear in newspapers and magazines, and various other media, all of which have a substantial interstate circulation or distribution. All of these advertisements contained respondent's name and address and were for the purpose of inducing and likely to induce the purchase of respondent's products by readers thereof writing direct to respondent and ordering the products offered for sale. Among and typical of the complete statements and representations contained in said advertisements are the following:

(1)

Breatheasy
for
Asthma
and
Hay Fever

(2)

Do You Want Relief From
ASTHMA

* * * * * * *

Breatheasy
For Asthma Sufferers

(3)

Breatheasy

For the relief of

ASTHMA

and Hay Fever

Sold Under Guarantee

(4)

ASTHMA

and

Hay Fever

Sufferers Use

BREATHEASY

Thousands of satisfied users

attest to the infinite relief

obtained from Breatheasy

(5)

ASTHMA

Don't Gasp for Breath

Breatheasy

Sold on Money Back Guarantee!

In addition to the foregoing advertisements, respondent mails circular form letters to prospects in territories or locations where there are

not subagents or sales outlets close to them. These letters are for the purpose of inducing, and are likely to induce, the purchase of respondent's preparation and device. In such letters respondent represents the preparation as—

The Breatheasy method for the relief of Asthma, Hay Fever and kindred ailments.

None of the advertisements nor the circular letters mailed direct to prospects contain any statement whatever warning such prospective purchasers that the use of the preparation "Breatheasy" would be harmful if the user was suffering from high blood pressure, toxic goiter, diabetes, or heart disease. Likewise no notice of the harmful effects of respondent's products, if used by persons suffering from any of such conditions, appears on the carton container or on the label for the preparation.

PAR. 6. Respondent includes in the package containing its preparation and device a small booklet containing information with respect to the preparation. In this booklet "Breatheasy" is recommended for chronic bronchitis. In this same booklet "Breatheasy" is recommended not only for the relief of asthma and hay fever but also for "other allergic conditions." It is further represented therein—"In allergic conditions of the skin, such as eczema, urticarias, and rashes of similar nature the regular use of Breatheasy several times a day will tend to clear up these conditions and in many cases make them disappear even when they have been present for years." Based upon the stipulation between counsel which appears in the record, the Commission finds that "Breatheasy" does not constitute an effective or competent treatment for chronic bronchitis or for urticaria or for skin diseases of the erythematous and eczematous types.

This booklet does contain a warning or cautionary statement as to harmful effects, which statement appears inconspicuously placed on page 4 under the caption "Summary." It reads—

The use of Epinephrin by inhalation is generally recognized by the medical profession as a satisfactory method of affording relief in the aforementioned conditions. There are very few instances where a person suffering with allergic conditions, with other complications, cannot use Epinephrin himself with safety. However, anyone suffering from some complication as goiter, diabetes or very high blood pressure, should consult his family physician and use BREATHEASY as he directs.

This booklet is not seen by the prospect until the purchase is made and the package opened. The warning statement is not so located in the booklet or so worded, in the light of the findings of fact herein made, to adequately reveal to prospective purchasers facts material in the

light of the representations made for such preparation in respondent's advertising and material with respect to consequences which may result from the use thereof under the conditions prescribed in the advertisements thereof or under such conditions as are customary and usual. The Commission finds that such material facts which have not been revealed in any of the respondent's advertising literature except the above-referred to booklet in which they are inadequately revealed are that the preparation "Breatheasy" should not be used by those suffering from high blood pressure, toxic goiter, diabetes, or heart disease.

PAR. 7. The use by the respondent of all the foregoing false advertisements disseminated as aforesaid, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that the representations made are true and that the preparation has the therapeutic values represented and into the purchase of substantial quantities of respondent's said products on account of the beliefs so induced. As a result of such erroneous belief with respect to the advertisement set out in paragraph 2 hereof trade has been diverted unfairly to respondent from its aforesaid competitors who do not misrepresent the therapeutic value of their products.

CONCLUSION

The representations made by the respondent prior to 1936, which representations are set forth in paragraph 2 hereof, and respondent's acts and practices in relation thereto are to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The representations made by respondent subsequent to 1936 and prior to March 21, 1938, to the effect that the preparation "Breatheasy" is a competent and effective treatment for chronic bronchitis and for eczema, urticaria (hives), and other skin diseases of the erythematous and eczematous types, which representations are set out in paragraph 6 hereof, and respondent's acts and practices in relation thereto, are to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The representations made by respondent subsequent to March 21, 1938, to the effect that the preparation "Breatheasy" is a competent and effective treatment for chronic bronchitis and for eczema, urticaria (hives), and other skin diseases of the erythematous and

eczematous types, which representations are set out in paragraph 6 hereof, and respondent's acts and practices in relation thereto, and respondent's acts and practices in failing to disclose to prospective purchasers in all of its advertising literature which is set out in paragraphs 5 and 6 hereof that the use of the preparation "Breatheasy" would be harmful if the user was suffering from high blood pressure, toxic goiter, diabetes, or heart disease, or to the prejudice and injury of the public and constitute 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 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, 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, Pascal Company, 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 in commerce as "commerce" is defined in the Federal Trade Commission Act of a medicinal preparation designated "Breatheasy," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

Representing that said preparation "Breatheasy" is a remedy or cure for chronic bronchitis; for heart disease or cardiac distress; for gastric ulcer; for serum rash, urticaria (hives), eczema, or other skin diseases of the erythematous and eczematous types; for inflammation of the nose, throat, tonsils, larynx, or lungs; or for neuralgia or neuritis; or that said preparation constitutes an effective or competent treatment for any of such diseases or disorders.

It is further ordered, That the respondent, Pascal 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 medicinal preparation

designated "Breatheasy" or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or 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 chronic bronchitis, eczema or urticaria (hives) or other skin diseases of the erythematous and eczematous types, or constitutes a competent and effective treatment for any of such disorders; or which advertisement fails to reveal that said medicinal preparation cannot be used with safety by persons suffering from high blood pressure, toxic goiter, diabetes or heart disease.

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 medicinal preparation, which advertisement contains any of the representations prohibited in Paragraph 1 hereof, or which fails to reveal that said medicinal preparation cannot be used with safety by persons suffering from high blood pressure, toxic goiter, diabetes or heart disease.

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

D.D.D. CORPORATION

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

Docket 3972. Complaint, Dec. 14, 1939—Decision, Apr. 19, 1941

Where a corporation engaged in interstate sale and distribution of its D.D.D. Prescription; by means of advertisements disseminated by mail, in newspapers and periodicals, and in circulars and other printed or written matter—

Represented that its aid preparation was a cure or remedy for eczema, blotches, pimples, athlete's foot, rashes, hives, insect bites, and minor cases of ivy and oak poisoning, and constituted a competent treatment for said disorders and conditions and would stop the itching associated therewith, through such statements, among others, as "STOP SCRATCHING. RELIEVE ITCHING SKIN *Quickly*. Even the most stubborn itching of eczema, blotches, pimples, athlete's foot, rashes, and other externally caused skin eruptions, quickly yields * * * Soothes the irritation and quickly stops the most intense itching," "STOP ITCHING TORTURE This Quick Way. For quick relief from the itching of eczema, blotches, pimples, athlete's foot, scales, rashes, and other externally caused skin eruptions * * *," "ITCH OF ECZEMA, RASHES AND OTHER EXTERNALLY CAUSED SKIN TROUBLES STOPPED QUICKLY," and "For the itching of skin irritations such as rashes, hives, and insect bites, as well as minor cases of ivy and oak poisoning, D. D. D. Liquid, ordinary strength, is recommended as an effective and ideal remedy;"

Facts being said preparation's properties were limited to those of an antipruritic, antiseptic, and astringent, with possibly mild germicidal properties; its therapeutic value in treatment of said conditions was limited to affording temporary relief from symptoms of itching or that resulting from use of an antipruritic, astringent, antiseptic, and mild germicidal agent; use of terms "blotches" and "rashes" in its said advertisements was too general and misleading, in that they might be due to varying systemic causes or to scarlet fever, measles, jaundice, and other constitutional conditions, respectively, and product in question was without therapeutic value in their treatment when thus caused; use of such terms as "other externally caused skin eruptions" had tendency to mislead public into belief that conditions referred to always resulted from external causes, and that its said preparation would have therapeutic value in treatment thereof, regardless of cause; while its use of words "stop itching" implied falsely that use of such preparation eliminated condition causing symptom of itching;

With effect of misleading and deceiving substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations were true, and of causing it, because of said belief, to purchase 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. Lewis C. Russell*, trial examiner.

Mr. Clark Nichols for the Commission.

Mr. W. E. Lucas of Haight, Goldstein & Hobbs, of Chicago, Ill., and *Mr. R. G. Sappenfield* of Geneva, 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 D.D.D. Corporation, 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, D.D.D. Corporation, is a corporation organized under the laws of the State of Delaware, with its principal place of business at Batavia, Ill. Respondent is now and for several years last past has been engaged in the manufacture, sale, and distribution of a medicinal preparation known as D.D.D. Prescription. Respondent causes said preparation, when sold, to be transported from its place of business in Batavia, Ill., to purchasers thereof located at various points in the several 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 preparation in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its said business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said medicinal preparation, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by 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 prep-

aration, 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:

STOP SCRATCHING

RELIEVE ITCHING SKIN *QUICKLY*

Even the most stubborn itching of eczema, blotches, pimples, athlete's foot, rashes and other externally caused skin eruptions, quickly yields to cooling, antiseptic, liquid D.D.D. PRESCRIPTION. Dr. Dennis' original formula. Greaseless and stainless. Soothes the irritation and quickly stops the most intense itching,

STOP ITCHING TORTURE *This Quick Way.*

For quick relief from the itching of eczema, blotches, pimples, athlete's foot, scales, rashes and other externally caused skin eruptions, use cooling antiseptic, liquid D.D.D. PRESCRIPTION. Original formula of Doctor Dennis. * * *

ITCH

STOPPED IN A HURRY BY D.D.D. * * *

Are you tormented with the itching torture of eczema, rashes, athlete's foot, eruptions, or other externally caused skin afflictions? For quick and happy relief, use cooling, antiseptic, liquid D.D.D. PRESCRIPTION.

ITCH

OF ECZEMA, RASHES AND OTHER

EXTERNALLY CAUSED SKIN TROUBLES STOPPED QUICKLY. USE D.D.D. PRESCRIPTION

SKIN RASH

RELIEVED * * * ITCHING STOPPED

For quick relief from itching of eczema, rashes, pimples, athlete's foot, and other externally caused skin eruptions, use cooling, antiseptic, liquid D.D.D. PRESCRIPTION. Greaseless, stainless, dries fast. Stops the most intense itching in a hurry.

Do you want to STOP that ITCH? All *right!* Step to your *drug* store. Get a *bottle of D.D.D. Prescription. Apply* this cooling, soothing, antiseptic *liquid* to your *skin*—and *watch* it *Stop* the *ITCH* in a *Jiffy!*

Stop that *ITCH* in a *jiffy* with *D.D.D. PRESCRIPTION.*

Stops that itching almost instantly.

It's *time* to *realize* that *D. D. D. Prescription* will *Stop* the *misery* of an *Itching Skin* in a *Jiffy! Try* it for *hives, eczema, winter rash* and *other* externally caused *Skin Itching.*

For the itching of skin irritation such as rashes, hives, and insect bites, as well as minor cases of ivy and oak poisoning, D. D. D. Liquid, ordinary strength, is recommended as an effective and ideal remedy.

For itching between the toes, cracked skin, etc., try this treatment.

SPECIAL NOTE!

After you have finished your treatment with D. D. D. and stopped the itching and cleared up your skin, the matter of keeping your complexion clean, clear and attractive in the future is important.

PAR. 3. Through the use of said statements and representations disseminated as aforesaid 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, D.D.D. Prescription, is a cure or remedy for, and a competent treatment of, eczema, blotches, pimples, athlete's foot, rashes, hives, insect bites, and minor cases of ivy and oak poisoning; that said preparation is a cure or remedy for and a competent treatment of rashes and other externally caused skin erruptions; that said preparation stops itching from the above-named diseases and conditions.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as aforesaid are grossly exaggerated, misleading, and untrue. In truth and in fact many of the diseases and conditions mentioned by the respondent as externally caused skin itching for which its product is recommended are in fact of constitutional origin, and as to such conditions respondent's preparation will have no therapeutic effect other than to temporarily relieve the symptom or itching. Said preparation will have no value in arresting pigment degenerations of the skin, which are referred to by the respondent as "blotches." Said preparation is not a cure or remedy for eczema, pimples, athlete's foot, rashes, or hives, or a competent treatment therefor, and said preparation has no therapeutic value in the treatment of such conditions in excess of temporarily alleviating the symptoms of itching. This preparation would not be a competent treatment for rashes or other externally caused skin eruptions except in those cases where a temporary acting antipruritic agent having some antiseptic properties might be of value.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to the therapeutic value and effectiveness of its product sold and distributed under the trade name of D. D. D. Prescription 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 false statements and representations are true, and has caused, and now causes, a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's product.

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 December 14, A. D. 1939, issued and subsequently served its complaint in this proceeding upon the the respondent, D.D.D. 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 Clark Nichols, attorney for the Commission, and in opposition to the allegations of the complaint by W. E. Lucas and R. G. Sappenfield, attorneys for the respondent, 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, and the report of the trial examiner and exceptions thereto, 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, D.D.D. Corporation, is a corporation organized under the laws of the State of Delaware, with its principal place of business at Batavia, Ill. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of a medicinal preparation known as D.D.D. Prescription. Respondent causes said preparation, when sold, to be trans-

ported from its place of business in Batavia, Ill., 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. 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; 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, and in circulars and other printed or written matter, are the following:

STOP SCRATCHING

RELIEVE ITCHING SKIN *Quickly*

Even the most stubborn itching of eczema, blotches, pimples, athlete's foot, rashes, and other externally caused skin eruptions, quickly yields to cooling, antiseptic, liquid D.D.D. PRESCRIPTION. Dr. Dennis' original formula. Greaseless and stainless. Soothes the irritation and quickly stops the most intense itching.

STOP ITCHING

TORTURE *This Quick Way.*

For quick relief from the itching of eczema, blotches, pimples, athlete's foot, scales, rashes and other externally caused skin eruptions, use cooling antiseptic, liquid D.D.D. PRESCRIPTION. Original formula of Doctor Dennis. * * *

ITCH

STOPPED IN A HURRY BY D.D.D.

Are you tormented with the itching tortures of eczema, rashes, athlete's foot, eruptions, or other externally caused skin afflictions? For quick and happy relief, use cooling, antiseptic, liquid D.D.D. PRESCRIPTION.

ITCH

OF ECZEMA, RASHES AND OTHER EXTERNALLY CAUSED SKIN TROUBLES STOPPED QUICKLY.

USE D.D.D. PRESCRIPTION

SKIN RASH

RELIEVED * * * ITCHING STOPPED

For quick relief from itching of eczema, rashes, pimples, athlete's foot, and other externally caused skin eruptions, use cooling, antiseptic, liquid D.D.D. PRESCRIPTION. Greaseless, stainless, dries fast. Stops the most intense itching in a hurry.

Do you want to STOP that ITCH? All *right!* Step to your *drug* store. Get a *bottle* of *D.D.D.* Prescription. *Apply* this cooling, soothing, antiseptic *liquid* to your *skin*—and *watch* it *Stop* the *Itch* in a *Jiffy!*

Stop that *ITCH* in a *jiffy* with D.D.D. PRESCRIPTION.

Stops that itching almost instantly.

It's *time* to *realize* that D.D.D. PRESCRIPTION will STOP the *misery* of an ITCHING SKIN in a JIFFY! *Try it for hives, eczema, winter rash* and *other* externally caused *skin itching.*

For the itching of skin irritations such as rashes, hives, and insect bites, as well as minor cases of ivy and oak poisoning, D.D.D. Liquid, ordinary strength, is recommended as an effective and ideal remedy.

For itching between the toes, cracked skin, etc., try this treatment.

SPECIAL NOTE!

After you have finished your treatment with D.D.D. and stopped the itching and cleared up your skin, the matter of keeping your complexion clean, clear and attractive in the future is important.

PAR. 3. The Commission finds that through the use of said statements and representations disseminated as aforesaid, 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 by implication, that its preparation, D.D.D. Prescription, is a cure or remedy for eczema, blotches, pimples, athlete's foot, rashes, hives, insect bites, and minor cases of ivy and oak poisoning, and that it constitutes a competent treatment for such disorders and conditions. By the same means the respondent also represents that said preparation will stop the itching associated with the above-named disorders and conditions.

PAR. 4. The Commission further finds that the aforesaid representations and claims used and disseminated by the respondent are grossly exaggerated, misleading, and untrue. Respondent's prepara-

tion is composed of alcohol, phenol, thymol, glycerine, salicylic acid, chloral hydrate, methyl salicylate, distilled water, and coloring matter, and its properties are limited to those of an antipruritic, antiseptic, and astringent, with possibly mild germicidal properties.

The Commission further finds that the condition known as eczema is due to a variety of causes, many of which are not definitely known to the medical profession. Such causes may be of an internal or systematic nature and, in some cases, of external origin. In the treatment of such condition, whether due to internal or external causes, the alleviation of itching is only a partial treatment to avoid the danger of infection from scratching and further irritation. In order to effect a cure, it is necessary for the physician to determine the underlying cause of such condition. Based upon the medical testimony the Commission finds that respondent's preparation has no therapeutic value in the treatment of eczema, whether due to internal or external causes, in excess of affording temporary relief from the symptom of itching, as it cannot be relied upon to affect or remove the underlying cause of such disorder or condition. In like manner, in the treatment of hives the therapeutic value of respondent's preparation is limited to the temporary alleviation of the symptom of itching. Pimples, as understood by the medical profession, are generally due to systemic conditions, and the use of respondent's preparation has no therapeutic value in the treatment thereof, in excess of affording temporary relief from the symptom of itching. The therapeutic value of respondent's preparation in the treatment of athlete's foot, insect bites, ivy and oak poisoning, or any other externally-caused skin disorder is limited to that afforded by the temporary relief of the symptom of itching, or to that afforded by the use of an antipruritic, astringent, antiseptic, and mildly germicidal agent.

The Commission further finds that the use of the terms "blotches" and "rashes" as disorders for which this preparation might be used as a treatment is too general and, to that extent, misleading to the public. Blotches may be caused from a depigmented or hyperpigmented condition of the skin, or from other causes of a systemic nature. Rashes may be caused by scarlet fever, measles, jaundice, drug erythemas, and other constitutional conditions. Respondent's preparation has no therapeutic value in the treatment of these disorders when due to such systemic or constitutional conditions.

The use by the respondent of the term "other externally caused skin eruptions" and statements of similar nature in connection with diseases and conditions which may be of a systemic, as well as

external, origin has the tendency to mislead and deceive the public into the belief that such conditions always result from external causes and that respondent's preparation would have therapeutic value in the treatment of such conditions regardless of cause.

The Commission further finds that the use of the words "stop itching," as appears in respondent's advertising hereinabove set forth, without proper qualification, has the tendency to mislead and deceive the public into the belief that the use of respondent's preparation will either permanently or temporarily eliminate the disease or condition causing the symptom of itching.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to the therapeutic value and effectiveness of its product sold and distributed under the trade name of D.D.D. Prescription 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 has caused, and now causes, a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase 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, the answer of the respondent, 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, and report of the trial examiner thereon and the respondent's exceptions thereto, briefs filed herein and oral arguments by counsel for the Commission and counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, D.D.D. Corporation, its officers, representatives, agents, and employees, directly or through any corpo-

rate or other device, in connection with the offering for sale, sale, or distribution of its preparation, D.D.D. Prescription, or any other preparation of substantially similar composition 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 advertisement represents, directly or through inference:

(*a*) That respondent's preparation, D.D.D. Prescription, is a cure or remedy for eczema, or that it has any thereapeutic value in the treatment thereof in excess of affording temporary relief from the symptom of itching.

(*b*) That respondent's preparation, D.D.D. Prescription, is a cure or remedy for pimples or hives, or that it has any therapeutic value in the treatment thereof, in excess of affording temporary relief from the symptom of itching.

(*c*) That respondent's preparation has any therapeutic value in the treatment of any disorder of the skin caused by internal or systemic conditions, in excess of affording temporary relief from the symptoms of itching.

(*d*) That said preparation has any therapeutic value in the treatment of blotches or rashes appearing on the skin, when due to systemic or constitutional conditions.

(*e*) That respondent's preparation has any therapeutic value in the treatment of athlete's foot, insect bites, and cases of ivy and oak poisoning, in excess of that afforded by the temporary alleviation of the symptom of itching, or that afforded by the use of an antipruritic, astringent, antiseptic, and mildly germicidal agent.

(*f*) Through the use of the words "and other externally caused skin eruptions," or other words or phrases of similar import or meaning in connection with diseases or conditions which may be of a systemic or internal origin, that such diseases and conditions are, in fact, solely of external origin or that respondent's preparation has therapeutic value in the treatment of such diseases and conditions regardless of their origin.

(*g*) Through the use of the words "stop itching" or other words or phrase of similar import or meaning, that respondent's preparation will either permanently or temporarily eliminate the disease or condition causing the symptom of itching or has any therapeutic value in excess of that afforded by the temporary alleviation of the symptom

of itching, or that afforded by the use of an antipruritic, astringent, antiseptic, and mildly germicidal agent.

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 medicinal preparation, D.D.D. Prescription, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof.

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

IN THE MATTER OF

JOHN J. TRACEY COMPANY

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

Docket 4315. Complaint, Sept. 16, 1940—Decision, Apr. 19, 1941

Where an individual engaged in interstate sale and distribution of toilet articles and soap to retailers—

Represented that his said product was of English origin or made in England, through printing on the cartons and boxes in which it was packed for shipping, and stamping on the cakes thereof, various names indicative of flower scents, with which were included word "English," such as "English Lilac," "English Honeysuckle," "English Orchid," "English Carnation," and "Flaroma English Cold Cream Soap," facts being none of such soaps were made in or imported from England, or of English origin, such as preferred by a substantial portion of the purchasing public, but were produced in the United States;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations and implications were true, and thereby cause purchase of his said products by it:

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.

Mr. Harris F. Williams, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that John J. Tracey 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, John J. Tracey Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois and having its principal place of business located at room 11102, Merchandise Mart, Chicago, Ill. Respondent is now and during the year last past has been engaged in the sale and distribution of toilet articles and soap. 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 Chicago, Ill., 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.

PAR. 2. In the course and conduct of its aforesaid business, respondent sells and distributes soap packed in cartons bearing the labels "English Lilac," "English Honeysuckle," "English Orchid," "English Carnation," and other names bearing the word "English," thereby representing that said soap contained in said cartons is of English origin or is made in England. The individual cakes of soap are also marked "English lilac," "English Honeysuckle," "English Orchid," and "English Carnation."

Respondent has also distributed in commerce as aforesaid certain soaps packed in cartons bearing the label "Cold Cream Soap—More Than a Soap, A Beauty Treatment," and the individual cakes bear the wording "Cold Cream Soap." Respondent thereby represents that such soap is made of cold cream or contains a sufficient amount of cold cream to possess added detergent or emollient properties by reason of the inclusion of such ingredient.

PAR. 3. The aforesaid representations are grossly exaggerated, false and misleading. In truth and in fact, none of the soaps labeled "English" are made in or imported from England, nor are they of English origin, but are made by a soap manufacturer in the United States. The soap labeled "Cold Cream Soap" contains insufficient cold cream to have any beneficial or emollient effects whatsoever in excess of those possessed by soaps not containing such ingredient.

PAR. 4. There is a marked preference on the part of a substantial portion of the purchasing public for soaps made in England or which are of English origin and imported into the United States.

PAR. 5. The acts and practices of respondent as herein set forth 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 respondent's soaps are of English origin and that said soaps possess qualities and benefits which they do not in fact possess, and the capacity and tendency to cause the public to purchase substantial quantities of respondent's 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 the 16th day of September 1940, issued and served its complaint in this proceeding upon said respondent, John J. Tracey Company, 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 7th day of October 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 Harris F. Williams, attorney of record for said 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 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. The filing of a trial examiner's report on the evidence was expressly waived.

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 matter and being now fully advised in the premises, finds that this proceeding is in the interest 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 J. Tracey Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and having its principal place of business located at room 11102, Merchandise Mart, Chicago, Ill. Respondent is now and during the year last past has been, engaged in the sale and distribution of toilet articles and soap. 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 Chicago, 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.

PAR. 2. The Commission finds that in the course and conduct of its business, the respondent has represented that its soap is of English origin or is made in England by printing on the cartons and boxes in which it is packed for shipping, and by stamping on the cakes of soap so packed for shipping, the following representations, among others, descriptive thereof:

English Lilac
English Honeysuckle
English Orchid
English Carnation
Flaroma English Cold Cream Soap

Other names indicative of other flower scents, which names included the word "English," have been used by respondent.

The Commission further finds that none of the soaps sold and distributed by the respondent and labeled "English" are made in or imported from England, or have an English origin, but, instead, such soaps have at all times been manufactured and produced in the United States.

There is a preference on the part of a substantial portion of the purchasing public for soaps made in England, or which are of English origin, and imported into the United States.

PAR. 3. The Commission further finds that respondent's cold cream soap has emollient properties over that possessed by ordinary soap only to the extent of the effect of its cold cream content under conditions of use.

PAR. 4. The use by the respondent of the foregoing false and misleading representations and implications that its said soap products are of "English" origin has had, and now has, the capacity and tendency to 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 respondent's products.

CONCLUSION

The 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 proceedings, and the Commission having made its findings as to the facts and conclusion that the respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, John J. Tracey 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 soap, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Using the word "English," or any other word or term of similar import and meaning, in any way to refer to or describe soap which is not made in England.

2. Representing in any manner that soap which is made in the United States is made in England or in any country other than 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

SOMERSVILLE MANUFACTURING COMPANY, AND J. J. O'DONNELL AND CLINTON ELLIS, TRADING AS O'DONNELL AND ELLIS

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

Docket 4324. Complaint, Sept. 27, 1940—Decision, Apr. 19, 1941

Where a corporation engaged in manufacture and interstate sale and distribution of various fabrics, and two individuals engaged as its selling agents in soliciting and filling orders from manufacturers of coats and other garments and in supplying to purchasers of said fabrics certain labels, as hereinafter described, furnished by said corporation and attached to garments in question when they were displayed and sold to retailers and purchasing public—

(*a*) Represented that their fabrics and garments made therefrom were composed entirely of fiber made from camel hair, through labels containing such legends, along with and preceding words "SOMERSVILLE FABRIC," as "GENUINE CAMEL'S HAIR," "CAMEL'S HAIR," and "KING CAMEL," together with depiction, in case of last, of camel and palm trees, notwithstanding fact none of said fabrics were made entirely from camel hair, but contained substantial percentages of wool, mohair and other fibers, and best cloth made by it in its mills and designated by it as "genuine camel hair" had never been made with more than 85 to 90 percent of said content, with balance of wool and other fibers; and

(*b*) Made use, also, on fabric generally containing 50 percent camel hair, 25 percent kid mohair and 25 percent wool of label featuring, in large script letters, words "CAMEL'S HAIR" and also setting forth, in much smaller, less conspicuous type, which would be entirely overlooked by many purchasers, words "Kid Mohair & Wool";

With effect of placing in the hands of uninformed or unscrupulous manufacturers or retail dealers a means and instrumentality whereby they were enabled to deceive and mislead members of the purchasing public by representing garments made from such fabrics and bearing such labels as being made entirely of camel hair, long possessed of high repute for warmth, lightness and other superior qualities and therefore decidedly preferred by substantial portion of purchasing public, and of similarly misleading and deceiving a substantial number of manufacturers and dealers and members of purchasing public, whereby they were respectively induced to and did purchase substantial quantities of said products and garments made therefrom:

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. Miles J. Furnas*, trial examiner.

Mr. Robert Mathis, Jr. for the Commission.

Schatz & Schatz, of Hartford, Conn., 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 Somersville Manufacturing Co., a corporation, and J. J. O'Donnell and Clinton Ellis, individuals trading as O'Donnell and Ellis, 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 Somersville Manufacturing Co. is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, and having its principal place of business at Somersville, Conn. The respondents, J. J. O'Donnell and Clinton Ellis, are individuals trading as O'Donnell and Ellis, and having their principal place of business at 450 Seventh Avenue, in the city and State of New York.

PAR. 2. The respondent Somersville Manufacturing Co. is now and for more than 2 years last past has been engaged in the business of manufacturing, selling, and distributing various fabrics. Said respondent causes its said products, when sold, to be transported from its said place of business, or from the place of the origin of the shipment thereof, to the purchasers thereof at their respective points or location in various States of the United States other than the State of Connecticut and other than the State of origin of the shipment thereof. Said 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.

The respondents O'Donnell and Ellis are selling agents for respondent Somersville Manufacturing Co., and are now and for more than 2 years last past have been engaged in the business of soliciting and filling orders from various manufacturers of coats and other garments for said fabrics manufactured by respondent Somersville Manufacturing Co. as aforesaid. Said respondents O'Donnell and Ellis cause said fabrics, and certain labels hereinafter referred to, when sold, to be transported from their said place of business in the State of New York, or from the place of origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York, and other than the State of origin of the shipment,

thereof. Said respondents maintain, and at all times mentioned herein have maintained a course of trade in said fabrics, and in said labels, in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business, and for the purpose of promoting the sale of their said fabrics, the respondents have engaged in the practice of falsely representing the constituent fibers or materials of which certain of their fabrics are made. Said false representations are made by means of labels supplied by the respondents to purchasers of their fabrics who are engaged in the manufacture of coats and other garments, such labels being supplied in order that they may be attached by such manufacturers to the coats and other garments made by them from respondents' fabrics. The labels so supplied are in fact attached to the coats and other garments so manufactured from said fabrics, and are in such coats and other garments when such products are displayed and sold to retail dealers and the purchasing public.

Among and typical of the labels so supplied by respondents and affixed to such coats and other garments are the following:

(1) GENUINE CAMEL'S HAIR SOMERSVILLE FABRIC

(2) CAMEL'S HAIR SOMERSVILLE FABRIC

(3) KING CAMEL SOMERSVILLE FABRIC

In the last foregoing label the words "King Camel" are followed by a pictorial representation of a camel and some palm trees.

Through the use of said labels respondents represent that said fabrics and the garments manufactured therefrom are composed entirely of fiber made from camel's hair.

PAR. 4. The aforesaid representations are false and misleading. In truth and in fact, none of said fabrics bearing the above labels are made entirely from camel's hair, but all of said fabrics contain substantial percentages of wool, mohair, or other matreial.

PAR. 5. For many years garments made entirely from camel's hair have enjoyed a favorable reputation for warmth, lightness of weight and other superior qualities, and because of such reputation there is a decided preference on the part of a substantial portion of the purchasing public for garments made from such material.

PAR. 6. The aforesaid practice on the part of respondents serves also to place in the hands of uninformed or unscrupulous manufacturers and retail dealers a means and instrumentality whereby they are enabled to deceive and mislead members of the purchasing public

by representing garments made from such fabric and bearing such labels as being made entirely of camel's hair.

PAR. 7. The acts and practices of the respondents as herein set forth have the tendency and capacity to, and do, mislead and deceive a substantial number of manufacturers, dealers and members of the purchasing public into the belief that certain of respondents' products and the garments made therefrom are composed of certain designated fibers or materials, when such is not the fact. As a result of such erroneous and mistaken belief, engendered as herein set forth, such manufacturers, dealers and members of the purchasing public have been induced to, and have, purchased substantial quantities of respondents' products and of the garments made from such products.

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 September 27, 1940, issued and subsequently served its complaint in this proceeding upon respondents, Somersville Manufacturing Co., a corporation, and J. J. O'Donnell and Clinton Ellis, individually and trading as O'Donnell and Ellis, 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' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Robert Mathis, Jr., attorney for the Commission, the respondents not being represented by counsel but appearing in person 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 answers thereto, testimony and other evidence (brief in support of the complaint, respondents' brief, oral argument, report upon the evidence by the trial examiner and all other intervening procedure having been expressly waived by respondents); 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 Somersville Manufacturing Co. is a corporation organized and existing under and by virtue of the laws of the State of Connecticut and having its principal place of business at Somersville, Conn. The respondents J. J. O'Donnell and Clinton Ellis are individuals trading as O'Donnell and Ellis and having their principal place of business at 450 Seventh Avenue in the city and State of New York.

PAR. 2. The respondent Somersville Manufacturing Co. is now, and for more than two years last past has been, engaged in the business of manufacturing, selling, and distributing various fabrics. Said respondent causes its said products, when sold, to be transported from its said place of business, or from the place of the origin of the shipment thereof, to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Connecticut and other than the State of origin of the shipment thereof. Said 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.

The respondents O'Donnell and Ellis are selling agents for respondent Somersville Manufacturing Co. and are now, and for more than two years last past have been, engaged in the business of soliciting and filling orders from various manufacturers of coats and other garments for said fabrics manufactured by respondent Somersville Manufacturing Co. Said respondents O'Donnell and Ellis cause said fabrics, and certain labels hereinafter referred to, when sold, to be transported from their said place of business in the State of New York, or from the place of origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York and other than the State of origin of the shipment thereof. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said fabrics, and in said labels, in commerce among and between the various States of the United States. The labels referred to above are furnished to respondents O'Donnell and Ellis by respondent Somersville Manufacturing Co. to be used and distributed as described herein and are paid for by respondent Somersville Manufacturing Co.

PAR. 3. In the course and conduct of their business and for the purpose of promoting the sale of their fabrics, the respondents have engaged in the practice of falsely representing the constituent fibers or materials of which certain of their fabrics are made. These false representations are made by means of labels supplied by the respondents to purchasers of their fabrics who are engaged in the manufacture of coats and other garments, such labels being supplied in order that they may be attached by such manufacturers to the coats and other garments made by them from respondents' fabrics. The labels so supplied are in fact attached to the coats and other garments so manufactured from said fabrics, and are in such coats and other garments when such products are displayed and sold to retail dealers and to the purchasing public.

Among and typical of the labels so supplied by respondents and affixed to such coats and other garments are the following:

GENUINE CAMEL'S HAIR
SOMERSVILLE FABRIC

CAMEL'S HAIR
SOMERSVILLE FABRIC

KING CAMEL
SOMERSVILLE FABRIC

In the last foregoing label the words "King Camel" are followed by a pictorial representation of a camel and some palm trees.

Through the use of these labels, the respondents represent that the fabrics so designated and the garments manufactured therefrom are composed entirely of fiber made from camel hair.

PAR. 4. In truth and in fact, none of the fabrics bearing the above labels are made entirely from camel hair, but all of them contain substantial percentages of wool, mohair, and other fibers.

The Commission finds that the respondent Somersville Manufacturing Co. has at all times used in its manufacturing processes a combination of wool, kid mohair and camel hair in the manufacture of the different fabrics which it produces and designates as camel hair. The best cloth manufactured by respondent Somersville Manufacturing Co. in its mills and designated by it as "genuine camel hair" has never been made with more than 85 percent to 90 percent camel-hair content, the balance of the product being wool and other fibers.

Respondents in addition to the labels quoted herein have used the following label on their products:

CAMEL'S HAIR
Somersville Fabric Kid Mohair & Wool

In the label quoted immediately above the words "Camel's Hair" are in large script letters, prominently displayed, and the words "Kid Mohair & Wool" are in much smaller, less conspicuous type which would be entirely overlooked by many purchasers. The product on which this label was used generally contained the following fiber percentages: 50 percent camel hair, 25 percent kid mohair, and 25 percent wool.

PAR. 5. For many years garments made entirely from camel hair have enjoyed a favorable reputation for warmth, lightness of weight and other superior qualities, and because of such reputation there is a decided preference on the part of a substantial portion of the purchasing public for garments made from such material.

PAR. 6. The aforesaid practices on the part of the respondents serve also to place in the hands of uninformed or unscrupulous manufacturers or retail dealers a means and instrumentality whereby they are enabled to deceive and mislead members of the purchasing public by representing garments made from such fabrics and bearing such labels as being made entirely of camel hair.

PAR. 7. The acts and practices of the respondents as herein found have the tendency and capacity to, and do, mislead and deceive a substantial number of manufacturers, dealers and members of the purchasing public into the belief that certain of respondents' products and the garments made therefrom are composed of certain designated fibers or materials when such is not the fact. As a result of such erroneous and mistaken belief, engendered as herein set forth, such manufacturers, dealers, and members of the purchasing public have been induced to purchase, and have purchased, substantial quantities of respondents' products and of the garments made from such 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 respondents, testimony and other evidence introduced in support of the allegations of said complaint by Robert Mathis, Jr., counsel for the

Commission and in opposition thereto by the respondents appearing in their own behalf, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, 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 Somersville Manufacturing Co., a corporation, its officers, directors, representatives, agents, and employees, and respondents J. J. O'Donnell and Clinton Ellis, individually and trading as O'Donnell and Ellis, 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 their various textile fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "camel's hair" or "camel" or any other term or terms descriptive of camel's hair on labels, or otherwise, to describe, designate or refer to any fabric or product which is not composed wholly of camel's hair; provided, however, that in the case of fabrics or products composed in part of camel's hair and in part of other fibers, such terms may be used as descriptive of the camel's-hair content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber thereof.

2. Using any pictorial design of a camel in connection with any description of or reference to fabrics or products in which camel's hair is not the predominating fiber.

3. Representing in any manner that fabrics or products offered for sale or sold by respondents contain camel's hair in greater quantity than is actually the case.

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

It is further ordered, That no provisions contained in this order shall be construed as authorizing or permitting after July 14, 1941, the labeling of any wool product in any manner other than in strict conformity with the provisions of the Wool Products Labeling Act.

IN THE MATTER OF

SHERRY'S CUT RATE DRUG 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 4345. Complaint, Oct. 10, 1940—Decision, Apr. 19, 1941

Where a corporation engaged in interstate sale and distribution of a drug preparation designated as "Mrs. Bee Femo Caps"; by advertisements of its said products disseminated through the mails, newspaper advertisements and other advertising literature—

(*a*) Represented, directly and by implication, that its said preparation constituted a competent and effective treatment for delayed menstruation, that there was no risk in its use, and that it did not cause the user discomfort or inconvenience, and that it was harmless and effective in obstinate, unnatural and suppressed cases of aforesaid condition;

Facts being it was not a competent and effective treatment for such condition, and was not safe or harmless, in that it contained certain drugs in quantities sufficient to cause serious and irreparable injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and, thus used, might result in 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 or other serious injury; and

(*b*) Failed to reveal facts material in the light of the representations contained in said advertisements, and that use thereof under conditions prescribed therein or under such conditions as are customary or usual, might result in serious injury to health;

With capacity and tendency, through use of such false, misleading, and deceptive representations, to mislead and deceive substantial portion of purchasing public into the erroneous and mistaken belief that its said preparation was a safe, harmless, competent and effective treatment for delayed menstruation, and with result, because of such mistaken belief, of inducing such public 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. William L. Taggart for the Commission.

Mr. A. J. Lubliner, of Bluefield, W. Va., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Sherry's Cut Rate Drug 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, Sherry's Cut Rate Drug Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 406 Federal Street, in the city of Bluefield, State of West Virginia.

PAR. 2. Respondent for some time past has been engaged in the sale and distribution of a drug preparation designated as "Mrs. Bee Femo Caps."

Respondent caused its said preparation, when sold, to be transported from its places of business in the State of West Virginia to purchasers thereof located in the various other 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 its aforesaid business, the respondent has disseminated, and has caused 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, and respondent has also disseminated, and has caused the dissemination of, false advertisements concerning its said preparation by various means for the purpose of inducing and which were 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 other advertising literature, is the following:

MODERN WOMEN

Harmless Prescription. Don't be discouraged. Don't be alarmed over delayed, unnatural suppressed periods.

A New Discovery, Mrs. Bee Femo Caps., the fast acting, safe aid to women. Acts without discomfort or inconvenience. Ask today for Mrs. Bee Femo Caps. SHERRY'S CUT RATE DRUG COMPANY, INC., 406 Federal Street, Bluefield, West Virginia.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out

herein, respondent has represented directly and by implication that its preparation, designated as "Mrs. Bee Femo Caps", constitutes a safe, competent and effective treatment for delayed menstruation; that there is no risk in its use, and that it does not cause the user discomfort or inconvenience, and that it is harmless and effective in obstinate, unnatural, and suppressed cases of delayed menstruation.

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 "Mrs. Bee Femo Caps," is not a competent or effective treatment for delayed menstruation. Said preparation is not safe or harmless in that it contains the drugs, ergot, oil of tansy 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.

The 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 by pregnant women, 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.

The 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 may produce a gangrenous condition of the lower limbs, resulting in possible loss of limbs or 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 serious 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 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 were true and that the preparation designated as "Mrs. Bee Femo Caps" is a safe, harmless, competent and effective treatment for delayed menstruation and to induce purchase by the public of the respondent's said preparation because of such erroneous and mistaken belief engendered as above set forth.

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 October 10, 1940, issued, and on October 11, 1940, served its complaint in this proceeding upon respondent Sherry's Cut Rate Drug 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. After the issuance and service of said complaint and filing of respondent's answer, the Commission by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and substitute answer, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Sherry's Cut Rate Drug Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 406 Federal Street, in the city of Bluefield, State of West Virginia.

PAR. 2. Respondent for some time past has been engaged in the sale and distribution of a drug preparation designated as "Mrs. Bee Femo Caps."

Respondent caused its said preparation, when sold, to be transported from its places of business in the State of West Virginia to purchasers thereof located in the various other 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 its aforesaid business, the respondent has disseminated, and has caused 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, and respondent has also disseminated, and has caused 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 other advertising literature, is the following:

MODERN WOMEN

Harmless Prescription. Don't be discouraged. Don't be alarmed over delayed, unnatural suppressed periods.

A New Discovery, Mrs. Bee Femo Caps., the fast acting, safe aid to women. Acts without discomfort or inconvenience. Ask today for Mrs. Bee Femo Caps.

SHERRY'S CUT RATE DRUG COMPANY, INC.,
406 Federal Street,
Bluefield, West Virginia.

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 "Mrs. Bee Femo Caps," constitutes a safe, competent and effective treatment for delayed menstruation; that there is no risk in its use, and that it does not cause the user discomfort or inconvenience, and that it is harmless and effective in obstinate, unnatural, and suppressed cases of delayed menstruation.

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 "Mrs. Bee Femo Caps," is not a competent or effective treatment for delayed menstruation. Said preparation is not safe or harmless in that it contains the drugs, ergot, oil of tansy 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.

The 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 by pregnant women, 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.

The use of said preparation may also produce a severe circulatory condition by the congestion of the blood vessels, and 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 may produce a gangrenous condition of the lower limbs, resulting in possible loss of limbs or other serious and irreparable injury to health.

PAR. 6. In addition to the representations hereinbefore 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 serious 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 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 were true and that the preparation designated as "Mrs. Bee Femo Caps" is a safe, harmless, competent, and effective treatment for delayed menstruation, and to induce purchase by the public of the 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 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, Sherry's Cut Rate Drug Company, 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 known as "Mrs. Bee Femo Caps," or any other preparation of substantially similar composition 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 advertisement represents directly or through inference, that said preparation constitutes a competent or effective treatment for delayed, unnatural or suppressed 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 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

ASSOCIATED NEWS PHOTOGRAPHIC SERVICE, INC., BLACKSTONE STUDIOS, INC., AND LEO FRIED AND WILLIAM SHAPIRO

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

Docket 3561. Complaint, Aug. 29, 1938—Decision, Apr. 22, 1941

Where two corporations and two individuals who were general officers thereof, together owned said corporations' capital stock, and directed and controlled their policies and practices, engaged in making photographs and photographic prints, and in interstate sale and distribution thereof to subjects and purchasers, in substantial competition with others, including those who do not, in respect of their business status or otherwise, make false representations; originally securing names of individuals for solicitation through arrangements with college and university alumni associations for photographing their members, and carrying on usual business only of a photographic studio under name of Blackstone Studios, Inc., which continued to finish their photographs during all the period here involved—

Following an extension of their business to include solicitation of trade association business under arrangements by which they acted as "official photographer," and, more particularly, in soliciting business of persons of prominence in various communities, usually the smaller cities, in which they made arrangements with various newspapers in return for a general letter of introduction designating them as "official photographers" or "representatives" of said papers, incident to the undertaking of which they organized, for use in all solicitation of and contacts with members of public, Associated News Photographic Service, Inc., as second of two corporations first referred to—

Made use, as aforesaid, of word "News" as included in said corporate and trade name (1) through aforesaid newspapers' letters, identifying "Associated News Photographic Service, Inc.," as particular paper's "official photographer" engaged in obtaining photographs for paper's files or use, and bespeaking any courtesies prospect might extend with no obligation on his part, and (2) through telephone contacts by their "bookers" or representatives, each of whom they supplied with letter of introduction stating that said individual was "authorized to take photographs for the files of the Associated News to be serviced to the leading trade and financial publications and to the press," and who advised prospect that the Associated News or the Associated News Photographic Service, Inc., desired his photograph in connection with some coming event or for its files for newspaper or other publicity service, and thereafter following such contacts at which the absence of any obligation was emphasized, and following return of proofs, and ostensibly to secure subject's choice for press release, sought and frequently secured orders of prospect;

Facts being that said corporations and individuals ordinarily had no knowledge at the time photographs of subjects were made as to whether or not such pictures would be printed in newspapers or other publicity media, they were not engaged in the business of procuring pictures for use of newspapers in spot news, they did not operate as a photographic department of any newspaper or news agency, such as Associated Press News Photographic Service, engaged in furnishing to the press current news pictures; the major portion of their sales of "glossy" prints suitable for reproduction in newspapers was to the individuals concerned or to publicity mediums other than newspapers, and less than 3 percent of their gross income was from sale of said glossy prints to newspapers; and notwithstanding occasional sale or furnishing by them of prints to newspapers, their real business was sale of finished pictures to persons photographed;

With effect, through false and deceptive representations, implications and use of names, of misleading and deceiving members of the public and unfairly diverting trade from competitors, and with capacity and tendency, further, through use of said name, to mislead and deceive persons solicited into believing that their pictures were desired for newspaper use, and that business in question was that of news or press photographers, and to conceal their real purpose:

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

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

Mr. John M. Russell for the Commission.

Mr. Boris Marcus, 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 Associated News Photographic Service, Inc., a corporation, Blackstone Studios, Inc., a corporation, Leo Fried and William Shapiro, individuals, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondents Associated News Photographic Service, Inc., and Blackstone Studios, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal places of business located at 20 West Fifty-seventh Street, in the city of New York in said State.

Leo Fried is president and William Shapiro vice president of both of said corporations respectively.

The individual respondents, acting together and in cooperation with each other, have dominant control of the advertising policies and business activities of said corporate respondents.

PAR. 2. Respondents now are, and have been for over two years last past, engaged in the business of taking photographs of persons, and in the sale and distribution of said photographs. Respondents cause said photographs, when sold, to be transported from the place of business of Blackstone Studios, Inc., in the State of New York, to purchasers thereof located in States of the United States other than the State of New York and the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said photographs sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents are in active and substantial competition with other corporations and individuals, and with partnerships and firms likewise engaged in the sale and distribution of photographs in commerce between and among the various States of the United States and in the District of Columbia. Among such competitors there are many who do not make any misrepresentations or false statements concerning the nature and character of their business.

PAR. 4. Associated Press, Inc., is a corporation organized and existing for many years last past under the laws of the State of New York as a news gathering association, with its main office located at 383 Madison Avenue, in the city of New York, with branch offices scattered throughout the United States. It has a department called Associated Press Photographic Service, which cooperates therewith throughout the United States by taking pictures of many of the persons who are the subject of some of its news items which, with said pictures, it furnishes to the newspapers of the country. It is generally recognized as a leading news agency in the United States. It has a valuable good-will and prestige on account of the interest in, and accuracy of, its news and is well and favorably known to the reading public.

PAR. 5. Agents of respondents call on prospects, located throughout the United States, and by making the statement that they are from the Associated Press, and similar statements herein later detailed, try to secure, or secure, permission to take their pictures under the guise they are taking their photographs for the press or publication therein. Thereafter, photographers representing respondents, call on said prospects and take their pictures. When the photographs are

made, all of the respondents, or their representatives, try to sell them to said prospects at exorbitant prices through the use of the false and misleading statements hereinafter mentioned.

PAR. 6. In the course and conduct of said business, and for the purpose of securing permission to take said photographs, and inducing the purchase of them by members of the purchasing public, respondents, directly, by the use of respondent Associated News Photographic Service, Inc's., name, and through their salesmen, solicitors, and agents, have made, and make, many representations concerning the character and nature of their business to customers, or prospective customers, located throughout the United States. Respondents cause their agents to display "press cards" to propects and to represent that they are connected with the Associated Press or the New York Times; that one or both of said respondent corporations is directly or indirectly connected with the leading newspapers of the United States; that they represent practically all the New York City newspapers, and have a following throughout the country; that prospect's picture is wanted by the New York Times and other prominent newspapers; that they are taking pictures of prominent men for use in trade publications, newspapers, and other publications; that they are obtaining said photographs for the files of Associated News, which furnishes news to the leading trade and financial publications and to the press; and that Associated News is likely to get calls for their picture.

PAR. 7. The said statements and representations, and similar statements and representations made by respondents, are deceptive, false, misleading, and untrue. In truth and in fact, the "press cards" respondents' agents display are simulated and merely used to impress and deceive prospects; said representatives or agents are not from the Associated Press, or the New York Times. Neither respondents nor their agents have any connection, direct or indirect, with any newspaper or publication. They do not want prospects' photographs for any of respondents' files, or to be serviced to the leading trade and financial publications or to the press, but merely in order to sell them to prospects at exorbitant prices. Associated News Photographic Service, Inc., gets practically no calls for any of said photographs.

PAR. 8. Each and all of the false and misleading statements and representations made by respondents as to the nature and character of their business as aforesaid were, and are, calculated to have, have had, and now have a tendency and capacity to, and do, mislead and

deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and into the belief that respondents' agents represent the Associated Press, Inc. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondents' product with the effect that trade has been diverted unfairly to respondents from competitors likewise engaged in the business of taking, selling, and distributing photographs, who truthfully advertise the nature and character of their business. As a consequence thereof, injury has been done, and is being done, by respondents to competition among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce 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 29, 1938, issued and subsequently served its complaint in this proceeding upon respondents Associated News Photographic Service, Inc., a corporation, Blackstone Studios, Inc., a corporation, Leo Fried and William Shapiro, individuals, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by counsel for the Commission and in opposition to the allegations of the complaint by counsel for respondents before examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and the 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 make this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Associated News Photographic Service, Inc., and Blackstone Studios, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, with their principal place of business located at 20 West Fifty-seventh Street, New York, N. Y. Respondent Leo Fried is president of Associated News Photographic Service, Inc., and of Blackstone Studios, Inc., and owns one-half of the capital stock of each corporation. Respondent William Shapiro is vice president and treasurer of Associated News Photographic Service, Inc., and of Blackstone Studios, Inc., and owns one-half of the capital stock of each corporation. The individual respondents William Shapiro and Leo Fried, through their ownership of the capital stock of the corporate respondents, dominate, direct, and control the policies and practices of Associated News Photographic Service, Inc., and Blackstone Studios, Inc.

PAR. 2. Respondents are engaged in making and selling photographs and photographic prints. They or their representatives or agents make photographs in Massachusetts, Connecticut, New York, Pennsylvania, Maryland, and other States, and negatives of such pictures are delivered to respondents' place of business at 20 West Fifty-seventh Street, New York, N. Y., where they are developed and prints or finished pictures are made; thereafter prints or finished pictures made from many of such negatives are shipped from said place of business in New York to purchasers located in the several States of the United States and in the District of Columbia. Respondents have maintained a constant course of trade and commerce in said prints and pictures sold and distributed between and among the various States of the United States and in the District of Columbia.

PAR. 3. Many methods are used by respondents in securing the names of individuals whom they subsequently solicit to pose for photographs and, if successful, whom they seek to sell finished prints of such pictures. Among the principal methods used are the following:

Respondents make arrangements with college and university alumni associations to photograph members of such associations. Pursuant to such arrangements a list of members of the alumni association is furnished to respondents; the association supplies respondents with a general letter of introduction to its members advising of the arrangement made and that no obligation is incurred by

either the association or the member who poses for a picture; and a picture of each alumnus photographed by respondents is supplied to the alumni association without cost to it.

Respondents make arrangements with trade associations to act as "official photographer" for the association at conventions, and frequently agree to furnish prints of such of the pictures as may be desired to the association for its own uses.

Respondents make arrangements with various newspapers, generally those located in smaller cities, to photograph persons of prominence in communities in which such papers circulate, and in return for a general letter of introduction designating respondents as "official photographers" or as "representatives" of such newspapers they agree to furnish at least one print of each such photograph without any charge therefor to the newspaper for its use or files. An example of such letter of introduction is as follows:

> The Associated News Photographic Service, Inc., is the official photographer for The Record Herald. The Associated News is engaged in obtaining photographs for our files or use. Courtesies will be appreciated, and there will be no obligation on your part.

Respondent William Shapiro stated in substance that the purpose of such arrangements is to sell pictures to the person photographed. His testimony is:

> We sent down and explained the type of business we do, photograph people, and we have a big file at that time and we are willing to photograph people for our own file on the chance of people, when they see the proofs, wanting them. When they see the proofs if they want to buy any pictures they are welcome.

In addition to the several methods stated, respondents photograph or seek to photograph many individuals of more or less prominence whose names are secured in other ways. These persons are first contacted by telephone by a representative or agent of respondents called a "booker" who advises such person that the "Associated News" or the "Associated News Photographic Service, Inc.," desires such person's photograph in connection with some coming event with which the person solicited may be connected, or that the photograph is desired for the files of the "Associated News" or the "Associated News Photographic Service, Inc.," for service to newspapers or other publicity mediums. In these contacts respondents emphasize that no obligation is incurred by the prospective subject. In those instances where the person solicited consents to pose, photographers employed by respondents call at a time appointed and photograph the subject. In connection with theses transactions the photog-

raphers carry, and frequently exhibit to prospective subjects, a general letter of introduction from respondent Associated News Photographic Service, Inc., the usual text of which is:

This will introduce Mr. _____ who is authorized to take photographs for the files of the Associated News to be serviced to the leading trade and financial publications and to the press.

Any courtesy shown Mr. _____ will be greatly appreciated.

Some days subsequent to the taking of photographs proofs thereof are delivered to the subject, either personally by salesmen employed by respondent or by other means such as mail or messenger. If delivered by one of respondents' employees, such employees directly or indirectly suggests that respondents would like to sell finished copies of one or more of the pictures to the subject. When the subject is interested in purchasing pictures, a discussion of prices and terms follow, and sales are thus frequently consummated. In the event the proofs were delivered by mail or messenger they may be accompanied by a letter from Associated News Photographic Service, Inc., the usual text of which is:

We are returning herewith the complete set of photographic proofs from the negatives we recently took of you. Will you be good enough to make your selection for press release and return same to us. You may keep the balance of the proofs with our compliments in return for the courtesy extended to us. We wish to advise you that your negatives are carefully preserved in our files. Should you desire to obtain some finished portraits from them we shall be glad to meet your requirements.

Within a reasonable time thereafter a representative of respondents may call upon the subject, ostensibly to secure the proof selected by the subject for "press release" and at that time such representative engages in the sales procedure hereinabove outlined in an effort, which is frequently successful, to induce the subject to purchase prints of one or more of the photographs made.

PAR. 4. The business of respondents was first carried on under the name of Blackstone Studios, Inc., and during this time, except for the usual business of a photographic studio, it was limited to arrangements with college or university alumni associations and was carried out in the manner stated in paragraph 3 hereof. Subsequently Associated News Photographic Service, Inc., was incorporated and the business of respondents was extended to include other methods, such as those also set out in paragraph 3 hereof. The purpose and value of the name of the new corporation was stated by respondent William Shapiro to be:

Because we cannot call up and say we want the picture for the Blackstone

Studios file we incorporated (d) Associated News Photographic Service. "We want your picture for our file."

The two corporations operate together; the finishing is done by Blackstone Studios, Inc., and all solicitation and contacts with members of the public looking toward securing permission to make pictures of individuals and the sale thereof are carried on by or in the name of Associated News Photographic Service, Inc.

PAR. 5. Respondents maintain a file of negatives of the pictures made, and this file is used in various ways. Sometimes finished pictures are later sold to subjects who did not purchase at the time the pictures were made, and sometimes reorders for such pictures are received from such subjects. Prints known as "glossy" prints, which are suitable for use for reproduction in newspapers and other journals, are also made up from respondents' files and sold. These glossy prints are sometimes sold to the subjects themselves for distribution to mediums of publicity, or other uses, and sometimes sold to advertising agencies, newspapers, trade journals, and others. In furnishing glossy prints to newspapers or other publications sometimes no charge is made, or payment is made by the publication with the picture of an acknowledgment of its source.

PAR. 6. With minor exceptions all pictures taken by respondents are made without any prior arrangement regarding compensation therefor, and respondents rely for their remuneration upon being able to sell finished pictures to a reasonable proportion of the subjects photographed. Respondents are successful in selling finished pictures to 25 percent to 30 percent of the subjects photographed, and these sales are made at prices which customarily range from $2.50 to $75 or more per finished print, depending upon the size and finish of the print and other considerations. Taking into account only the sales of glossy prints made up from negatives kept on file by respondents, the major portion of such sales is to the individuals concerned or to publicity mediums other than newspapers, and a minor portion of the sales are to newspapers. Of this minor portion but a small part is for use with current news. Less than 3 percent of respondents' gross income is from the sale of such glossy prints to newspapers.

PAR. 7. Respondents represent that pictures are desired for "press release" and "for the files of the Associated News to be serviced to the leading trade and financial publications and to the press," whereas in truth and in fact, with possible rare exceptions, respondents have no knowledge at the time photographs of subjects are made as to whether or not such pictures will be printed in newspapers or other publicity mediums, and the pictures are not taken by respondents for

the purpose of making sales of glossy prints thereto to newspapers or other publications. Respondents are not engaged in the business of procuring pictures for the use of newspapers in spot news. They do not operate as the photographic department or agency of any newspaper or news agency engaged in furnishing to the press spot or current news or news pictures. From time to time prints of pictures taken by respondents are furnished or sold to newspapers when such papers do not have or cannot readily procure pictures of persons whose photographs are desired, provided respondents have such pictures in their files. These transactions, and the maintenance of the file or library hereinbefore mentioned, are, however, only incidental to the real business of respondents, which is the sale of finished pictures to persons photographed.

PAR. 8. The use of the names "Associated News" and "Associated News Photographic Service, Inc.," in seeking permission to photograph individuals carries with it the implication that the pictures are desired for purposes of publication as or with news and that the pictures are being taken for or on behalf of some news-gathering agency for immediate use. The manner of soliciting prospective subjects, such as connecting the request with some event in which the subject may be interested and falsely stating that the picture is desired for publicity purposes in connection with such event, tends to, and does, further the implication carried by the names used, as do also the representations concerning purported connections maintained by respondents with specific newspapers, whereas in truth and in fact the purpose in taking a picture is to sell copies to the person photographed. The false and deceptive implications of the names used and the false and deceptive representations and implications used in soliciting prospective subjects have the capacity and tendency to, and do, mislead and deceive members of the public and unfairly divert trade to respondents from competitors engaged in the sale of photographs to members of the public.

PAR. 9. The Associated Press, a news-gathering agency cooperatively maintained by many newspapers, has a department of its business engaged in securing photographs of news events and persons concerned in or connected with news events, copies of which photographs are furnished to newspaper members of the Associated Press for use in such newspapers, but copies of such pictures are not furnished or sold to persons who may appear in such pictures. This department is known as Associated Press "News Photographic Servive." The use by respondents of the corporate name "Associated News Photographic Service, Inc.," has the capacity and tendency to

mislead and deceive the members of the public solicited by respondents into believing that their pictures are actually then and there desired for newspaper use and that respondents' business is that of news or press photographers. Further, the use by respondents of the names "Associated News" and "Associated News Photographic Service, Inc.," separately or in conjunction with the accompanying representations hereinbefore set out, has the capacity and tendency to mislead and deceive members of the public as to respondents' purpose in soliciting pictures, and to conceal the fact that respondents' real purpose is to sell to them photographs of themselves.

PAR. 10. Respondents in the course and conduct of their business have been, and are, in substantial competition in commerce with other individuals, partnerships, and corporations engaged in the making of photographs and the sale of prints thereof. Among said competitors of respondents are many who do not in any manner misrepresent their business status or make other false representations to procure and induce the sale of their products.

CONCLUSION

The aforesaid acts and practices of the respondents 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.

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 examiners of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel; 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 Associated News Photographic Service, Inc., a corporation, Blackstone Studios, Inc., a corporation, Leo Fried and William Shapiro, individuals, either jointly or severally, and their representatives, agents, and employees, directly or through any corporate or other device, or by implication, in con-

nection with the solicitation of permission to make photographs or the offering for sale, sale, or distribution of photographs and photographic prints in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "News," or any other word or term of similar import or meaning, in the corporate name of respondent Associated News Photographic Service, Inc., or as a part of any other trade or corporate name, to designate or describe a business which is principally that of selling photographic prints to persons photographed.

2. Representing or implying in any manner to any prospective customer that respondents, or any of them, are news or press photographers, or that any photograph solicited is for press or publicity purposes, unless such photograph is actually for immediate news or press use.

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

IN THE MATTER OF

UNIVERSAL INDUSTRIES, INC., ABRAHAM LEONARD KOOLISH, MRS. IDA B. KOOLISH AND GEORGE WILLIAM EHRLICH, INDIVIDUALLY AND AS OFFICERS AND DIRECTORS OF UNIVERSAL INDUSTRIES, INC.

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

Docket 3882. Complaint, Aug. 30, 1939—Decision, Apr. 24, 1941

Where a corporation and two individuals who were officers and directors thereof and controlled and directed its policies, acts and practices and who had been theretofore engaged in carrying on through the guise, successively, of two other corporate instrumentalities, such acts and practices as hereinbelow set forth; engaged in interstate sale and distribution to retailers and other purchasers of a sales stimulator plan and device, including trade cards, circulars, and other advertising material, and also tableware and other products used as premium merchandise in connection therewith;

In advertising in newspapers, periodicals, circulars, letters and bulletins to procure salesmen and distributors to solicit orders for said plan, under which cards given by merchant to his customers, when stamped with purchases aggregating $5 or other specified sum, and payment of 49 cents additional, entitled customer to a 5-piece set of silverware—

(*a*) Represented, directly or by implication, that the corporation in question was organized in 1909, had been engaged in the sale of sales stimulator plans for 29 years, had strong financial ratings in all commercial agencies, including Dun & Bradstreet, and that its assets amounted to $200,000; facts being said representations were false: the corporation was organized in 1939 and had been engaged in the sale of said plan only since then, it did not have financial ratings in any commercial agencies, and its assets were substantially less than aforesaid sum;

(*b*) Represented, as aforesaid, that, in the sale of such sales plan and merchandise, their salesmen and distributors earned $20 a day, $400 a month, or various other sums approximating thereto, in the ordinary course of their business under normal conditions; facts being they earned substantially less than such amounts;

(*c*) Represented that they gave absolutely free to their salesmen and distributors a camera of the retail value of $5; when in fact a camera was not given free, but salesmen were required to procure a sale of said plan and merchandise and to send in a picture of a retail merchant displaying advertising literature relative thereto in order to secure it, and its value was substantially less than the sum represented:

(*d*) Represented that merchants purchasing said sales plan and participating therein received from their customers $5 worth of business at a cost of 1 cent only in that sets of silverware, for which customer paid 49 cents, cost merchant 50 cents; facts being merchants were charged $4.95 for plan in question, which included cards, literature and two display sets

of tableware, and no refund of said amount was made until merchants had bought eight dozen sets of said tableware, and from the refund, if and when made, there was deducted resale value of said two display sets; and

(e) Represented that said premium merchandise which they designated as "Princess Pat" silverware, had an ordinary retail value of $2 a set; when its ordinary retail value was in fact substantially less;

With effect of causing members of the purchasing public and prospective salesmen and distributors to believe mistakenly that said misrepresentations were true and thereby of inducing them to purchase said sales stimulator plan:

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. Miles J. Furnas*, trial examiner.

Mr. J. W. Brookfield, 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 Universal Industries, Inc., a corporation, and Abraham Leonard Koolish, Mrs. Ida B. Koolish, and George William Ehrlich, individually and as officers and directors of Universal Industries, Inc., hereinafter referred to as respondents, have violated the provisions of the said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Universal Industries, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 6227 Broadway, in the city of Chicago, State of Illinois. Respondent, Abraham Leonard Koolish, Mrs. Ida B. Koolish, and George William Ehrlich, are officers and directors of the corporate respondent, Universal Industries, Inc., and formulate, control, and direct the policies, acts, and practices of said corporate respondent.

The respondents have all acted in concert and in cooperation and conjunction with each other in performing the acts and practices hereinafter alleged.

PAR. 2. Respondents are now, and during the year last past have been, engaged in the sale and distribution of a sales stimulator plan and device, including among other things, trade cards, circulars, and

other advertising material, and in the sale and distribution of tableware and other products which are used as premium merchandise in connection with the operation of said sales stimulator plan. In the course and conduct of their business respondents sell their said sales plan and merchandise to retail dealers and other purchasers and during the year last past have caused said sales plan and merchandise, 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. At all times mentioned herein respondents have maintained a course of trade in said sales plan and merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Said sales stimulator plan, which is sold and distributed by respondents as aforesaid, includes, among other things, a number of sales cards which are placed by respondents in the hands of retail dealers and in turn by such dealers in the hands of customers and prospective customers. Said cards have printed around their edge a series of figures such as "5," "10," "25," etc., and as merchandise is purchased by the holder of such card the retail dealer punches in said card the figure representing the purchase price of the merchandise. The figures on said card aggregate the amount of $5 or other sums and when the dealer's customer has purchased merchandise in said amount such customer is entitled, upon paying an additional 49 cents to receive a 5-piece set of respondents' silverware.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of procuring the services of salesmen and distributors to solicit purchase orders for said sales stimulator plan and merchandise, and in furtherance of the sale thereof, respondents have caused various statements and representations relative to the earnings of their salesmen and distributors and relative to said sales plan and merchandise to be inserted in advertisements in newspapers, periodicals, and other publications, having a circulation among and between various States of the United States and in the District of Columbia, and in circulars, letters, and bulletins distributed to members of the public situated in various States of the United States and in the District of Columbia. Among and typical of said statements and representations are the following:

Established 1909.

Working for us, you will represent a reliable, old line company with a record of 29 years successful operation.

For 29 years Universal Industries has built and increased retail merchants' business by means of sales stimulator plans.

29 years continual progress makes Universal Industries the leading organization in the sales stimulator field.

Universal Industries carries a strong financial rating in all commercial agencies. For verification, consult Dun & Bradstreet, or your local banker. All this has been possible only because Universal has liberally paid loyal manpower good earnings.

References Dun & Bradstreet, Chicago Chamber of Commerce, any bank or trust company anywhere. This company backed by $200,000.00 in assets, and 29 years of business experience.

This proposition can be worth at least $400.00 extra money to you in the next 30 days.

Would you be interested in a permanent, steady, dignified, profitable position with an old, well-rated and successful business? Does $20 or more a day right now interest you?

Do you know that it is possible for the literature in your hands this very minute to enable you to put up to $20 in your pocket before nightfall.

Here's what I have in mind: A short time ago, we announced the Silverware Sales Building Plan for Retail Merchants and it is going over like a house on fire. Sales are rolling in from all parts of the country. Every mail brings a deluge of orders. Salesmen are cleaning up.

There is money in furnishing Sales Building Campaigns to Merchants—Real money and you can get your share of it if you follow my advice. Mr. Iskoe made $264 the first ten days, as this is written, of last month. Mr. Roberson made $136 in four days time not long ago and Mr. Stickles earned money at the rate of $85 a week the first seven days he worked, handling one of our trade-stimulator plans.

Each time the customer has spent $5.00 with the merchant, she gets one of these sets for only 49¢. The sets cost the merchant in turn 50¢ each so he has obtained $5.00 worth of business for a total cost to him of only 1¢. But that isn't all, the chances are once a customer has 1 set she will want 5 more, so she'll have a complete service for 6. And in that case she will have to purchase $30.00 worth of goods or services and it will cost the merchant only 6¢.

Beautiful Princess Pat Silverware Set * * * $2.00 value only 49¢.

In order to further induce members of the public to solicit purchase orders for said sales plan and merchandise, respondents cause circulars and other printed matter to be disseminated as aforesaid containing representations that respondents give to their salesmen and distributors a "$5.00 Candid Camera absolutely FREE."

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondents have represented directly or by implication that the said corporate respondent, Universal Industries, Inc., was organized in the year 1909, and has been engaged in the sale of sales stimulator plans for 29 years, that said corporate respondent has strong financial ratings in all commercial agencies, including Dun & Bradstreet,

and that its assets amount to $200,000, that respondents' salesmen and distributors earn, in the sale of respondents' said sales plan and merchandise, $20 a day, $400 a month or various other sums approximately equal thereto in the ordinary course of their business under normal conditions and circumstances. Respondents further represent, as aforesaid, that merchants purchasing and participating in said sales plan receive from their customers $5 worth of business at a cost to the merchants of only 1 cent and that the aforesaid premium merchandise designated by respondents as "Princess Pat Silverware" has an ordinary retail value of $2 a set. Respondents further represent that the aforesaid camera is given by respondents to their salesmen and distributors absolutely free and that said camera has an ordinary retail value of $5.

PAR. 6. The aforesaid statements and representations by respondents are false and misleading. In truth and in fact the said corporate respondent, Universal Industries, Inc., was not organized in the year 1909 and has not been engaged in the sale of sales stimulator plans for 29 years. Said corporate respondent was organized in the year 1939 and has been engaged in the sale of said sales plans only since said date of its organization.

At the times the aforesaid advertisements were disseminated by respondents, the said corporate respondent did not have strong financial ratings or any financial ratings in any commercial agencies. The assets of said corporate respondent do not amount to $200,000, but are substantially less than such amount. The salesmen and distributors of respondents do not earn in the sales of respondents' said sales plan and merchandise $20 a day or $400 a month or any other sums approximately equal thereto in the ordinary course of their business under normal conditions and circumstances. In fact said salesmen and distributors earn substantially less than such amounts. The merchants purchasing and participating in said sales plan do not receive from their customers, pursuant to such plan, $5 worth of business at a cost to the merchants of only 1 cent. The merchants purchase said tableware from the respondents at 50 cents a set and resell same to their customers at 49 cents a set when the customers have purchased from the merchants $5 worth of other merchandise. In addition to this loss of 1 cent on each set of premium merchandise, the merchants pay the respondents $4.95 for the sales plan, which includes the cards, literature and two display sets of tableware. Respondents do not refund any of such $4.95 to the merchants until the merchants have purchased from respondents 8 dozen sets of said tableware and respondents deduct from such refund, if and when

made, the resale value of the two display sets of tableware furnished to the merchants.

The aforesaid tableware designated "Princess Pat Silverware" does not have an ordinary retail value of $2 a set but has an ordinary retail value of substantially less than such amount. Respondents do not give said camera "absolutely free" to their salesmen and distributors. Respondents require their salesmen and distributors to perform certain services in connection with obtaining said camera consisting of procuring a sale of said sales plan and merchandise and sending respondents a picture of a retail merchant displaying the advertising literature relative to such plan. In fact the said camera does not have an ordinary retail value of $5 but has an ordinary retail value of substantially less than such amount.

PAR. 7. The use by the respondents of the aforesaid false and misleading statements and representations has the capacity and tendency to, and does, cause members of the purchasing public and prospective salesmen and distributors to have the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true, and causes members of the purchasing public to purchase respondents' said sales plan and merchandise and causes prospective agents and distributors to undertake the sale of, and to sell, said sales plan and merchandise because of said erroneous and mistaken belief.

PAR. 8. 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 August 30, A. D., 1939, issued and subsequently served its complaint in this proceeding upon the respondents, Universal Industries, Inc., a corporation, and Abraham Leonard Koolish, Mrs. Ida B. Koolish, and George William Ehrlich, individually and as officers and directors of Universal Industries, 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 and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by L. P. Allen, attorney for the Commission, and in opposition to the allegations of the complaint by Arthur H. Schwab, attorney for the respondents, before Miles J. Furnas, an

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The Commission finds that Universal Industries, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 2222 Diversey Parkway, in the city of Chicago, State of Illinois. Respondents Abraham Leonard Koolish and George William Ehrlich are officers and directors of the corporate respondent, Universal Industries, Inc., and formulate, control, and direct the policies, acts, and practices of said corporate respondent. Mrs. Ida B. Koolish is an officer and director of the corporate respondent, but there is no evidence that she has taken any active interest in said business.

PAR. 2. Respondents Universal Industries, Inc., Abraham Leonard Koolish and George William Ehrlich are now, and during the year last past have been, engaged in the sale and distribution of a sales stimulator plan and device, including among other things, trade cards, circulars, and other advertising material, and in the sale and distribution of tableware and other products which are used as premium merchandise in connection with the operation of said sales stimulator plan. In the course and conduct of their business, said respondents sell their said sales plan and merchandise to retail dealers and other purchasers and during the year last past have caused said sales plan and merchandise, 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. At all times mentioned herein said respondents have maintained a course of trade in said sales plan and merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Said sales stimulator plan, which is sold and distributed by respondents as aforesaid, includes, among other things, a number of sales cards which are placed by respondents in the hands of retail

dealers and in turn by such dealers in the hands of customers and prospective customers. Said cards have printed around their edge a series of figures such as "5," "10," "25," etc., and as merchandise is purchased by the holder of such card the retail dealer punches in said card the figure representing the purchase price of the merchandise. The figures on said card aggregate the amount of $5 or other sums and when the dealer's customer has purchased merchandise in said amount such customer is entitled, upon paying an additional 49 cents, to receive a 5-piece set of respondents' silverware.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of procuring the services of salesmen and distributors to solicit purchase orders for said sales stimulator plan and merchandise, and in furtherance of the sale thereof, said respondents have caused various statements and representations relative to the earnings of their salesmen and distributors and relative to said sales plan and merchandise to be inserted in advertisements in newspapers, periodicals, and other publications having a circulation among and between various States of the United States and in the District of Columbia, and in circulars, letters, and bulletins distributed to members of the public situated in various States of the United States and in the District of Columbia. Among and typical of said statements and representations are the following:

Established 1909.

Working for us, you will represent a reliable, old line company with a record of 29 years successful operation.

For 29 years Universal Industries has built and increased retail merchants' business by means of sales stimulator plans.

29 years continual progress makes Universal Industries the leading organization in the sales stimulator field.

Universal Industries carries a strong financial rating in all commercial agencies. For verification, consult Dun & Bradstreet, or your local banker. All this has been possible only because Universal has liberally paid loyal manpower good earnings.

References Dun & Bradstreet, Chicago Chamber of Commerce, any bank or trust company anywhere. This company backed by $200,000.00 in assets, and 29 years of business experience.

This proposition can be worth at least $400.00 extra money to you in the next 30 days.

Would you be interested in a permanent, steady, dignified, profitable position with an old, well-rated and successful business? Does $20 or more a day right now interest you?

Do you know that it is possible for the literature in your hands this very minute to enable you to put up to $20 in your pocket before nightfall.

Here's what I have in mind: A short time ago, we announced the Silverware Sales Building Plan for Retail Merchants and it is going over like a house

on fire. Sales are rolling in from all parts of the country. Every mail brings a deluge of orders. Salesmen are cleaning up.

There is money in furnishing Sales Building Campaigns to Merchants—Real money and you can get your share of it if you follow my advice. Mr. Iskoe made $264 the first ten days, as this is written, of last month. Mr. Roberson made $136 in four days time not long ago and Mr. Stickles earned money at the rate of $85 a week the first seven days he worked, handling one of our trade-stimulator plans.

Each time the customer has spent $5.00 with the merchant, she gets one of these sets for only 49¢. The sets cost the merchant in turn 50¢ each so he has obtained $5.00 worth of business for a total cost to him of only 1¢. But that isn't all, the chances are once a customer has 1 set she will want 5 more, so she'll have a complete service for 6. And in that case she will have to purchase $30.00 worth of goods or services and it will cost the merchant only 6¢.

Beautiful Princess Pat Silverware Set * * * $2.00 value only 49¢.

In order to further induce members of the public to solicit purchase orders for said sales plan and merchandise, said respondents cause circulars and other printed matter to be disseminated as aforesaid containing representations that respondents give to their salesmen and distributors a "$5 Candid Camera absolutely FREE."

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the said respondents have represented directly or by implication that the said corporate respondent, Universal Industries, Inc., was organized in the year 1909, and has been engaged in the sale of sales stimulator plans for 29 years, that said corporate respondent has strong financial ratings in all commercial agencies, including Dun & Bradstreet, and that its assets amount to $200,000, that respondents' salesmen and distributors earn, in the sale of respondents' said sales plan and merchandise, $20 a day, $400 a month or various other sums approximately equal thereto in the ordinary course of their business under normal conditions and circumstances. Said respondents further represent, as aforesaid, that merchants purchasing and participating in said sales plan receive from their customers $5 worth of business at a cost to the merchants of only 1 cent and that the aforesaid premium merchandise designated by respondents as "Princess Pat Silverware" has an ordinary retail value of $2 a set. Said respondents further represent that the aforesaid camera is given by respondents to their salesmen and distributors absolutely free and that said camera has an ordinary retail value of $5.

PAR. 6. The Commission further finds that the aforesaid statements and representations by the said respondents are false and misleading. In truth and in fact the said corporate respondent, Uni-

versal Industries, Inc., was not organized in the year 1909 and has not been engaged in the sale of sales stimulator plans for 29 years. Said corporate respondent was organized in the year 1939 and has been engaged in the sale of said sales plans only since said date of its organization.

At the times the aforesaid advertisements were disseminated by said respondents, the said corporate respondent did not have strong financial ratings or any financial ratings in any commercial agencies. The assets of said corporate respondent do not amount to $200,000 but are substantially less than such amount. The salesmen and distributors of said respondents do not earn in the sale of respondents' said sales plan and merchandise $20 a day or $400 a month or any other sums approximately equal thereto in the ordinary course of their business under normal conditions and circumstances. In fact, said salesmen and distributors earn substantially less than such amounts. The merchants purchasing and participating in said sales plan do not receive from their customers, pursuant to such plan, $5 worth of business at a cost to the merchants of only 1 cent. The merchants purchase said tableware from the respondents at 50 cents a set and resell same to their customers at 49 cents a set when the customers have purchased from the merchants $5 worth of other merchandise. The merchants pay the respondents $4.95 for the sales plan, which includes the cards, literature, and two display sets of tableware. Respondents do not refund any of such $4.95 to the merchants until the merchants have purchased from respondents eight dozen sets of said tableware and respondents deduct from such refund, if and when made, the resale value of the two display sets of tableware furnished to the merchants.

The aforesaid tableware designated "Princess Pat Silverware" does not have an ordinary retail value of $2 a set but has an ordinary retail value of substantially less than such amount. Said respondents do not give said camera "absolutely free" to their salesmen and distributors. Respondents require their salesmen and distributors to perform certain services in connection with obtaining said camera consisting of procuring a sale of said sales plan and merchandise and sending respondents a picture of a retail merchant displaying the advertising literature relative to such plan. In fact, the said camera does not have an ordinary retail value of $5 but has an ordinary retail value of substantially less than such amount.

PAR. 7. The use by the said respondents of the aforesaid false and misleading statements and representations has the capacity and tendency to, and does, cause members of the purchasing public and

prospective salesmen and distributors to have the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true, and causes members of the purchasing public to purchase respondents' said sales plan and merchandise and causes prospective agents and distributors to undertake the sale of, and to sell, said sales plan and merchandise because of said erroneous and mistaken belief.

PAR. 8. The Commission further finds that the individual respondents Abraham Leonard Koolish and George William Ehrlich have been identified with various other corporations as officers, directors, and stockholders, which corporations were engaged in the sale and distribution of sales stimulator plans and devices similar to that hereinabove described, and which corporations also used the trade name Universal Industries in the course and conduct of their business.

The K. & S. Sales Company was a corporation organized in 1915, with principal office and place of business originally at 4325 Ravenswood Avenue, but which was later removed to 6227 Broadway. This corporation was dissolved about January 23, 1939. During the time that this corporation was in existence, it was engaged in the sale and distribution of various types of sales stimulator plans and devices, such as push cards and silverware sales stimulator plans similar to that involved in the present case. During the time that this corporation was in existence, respondent Abraham Leonard Koolish, L. L. Lichtenstein, and respondent George William Ehrlich were all directors and president, vice president, and secretary, respectively, of said corporation, and owned 125 shares each of the capital stock of said corporation, which comprised the entire capital stock issued. In the course and conduct of its business said corporation used the trade name Universal Industries.

On or about January 21, 1939, the Regal Industries, Inc., a corporation, was organized for the purpose of liquidating the K. & S. Sales Company. This corporation had its principal place of business at 6227 Broadway, and respondent Abraham Leonard Koolish, respondent George William Ehrlich, and L. L. Lichtenstein were the owners of the entire capital stock issued, amounting to 10 shares, which was divided equally. Abraham Leonard Koolish, George William Ehrlich, and L. L. Lichtenstein were directors and president, secretary and treasurer, and vice president, respectively, of said corporation. Shortly after the organization of said corporation, L. L. Lichtenstein discontinued his connection, and his stock was purchased by respondents Abraham Leonard Koolish and George William

Ehrlich, with the result that each held 5 shares of the capital stock of said corporation. At the same time, Mrs. Ida B. Koolish became vice president and director of said corporation. This corporation operated a silverware sales stimulator plan for a short time and used the trade name Universal Industries.

On or about March 18, 1939, the respondent corporation, Universal Industries, Inc., was organized, with its principal place of business located at 6227 Broadway. The respondents Abraham Leonard Koolish and George William Ehrlich are the owners of the entire capital stock of said corporation, amounting to 50 shares each. Said respondents Abraham Leonard Koolish and George William Ehrlich, and Mrs. Ida B. Koolish are directors and president, secretary and treasurer, and vice president, respectively, of said corporation. Said corporate respondent later removed its place of business to 2222 Diversey Parkway.

The Commission further finds that the K. & S. Sales Company, Regal Industries, Inc., and Universal Industries, Inc., were closely held corporations, owned, dominated, and managed by the individual respondents Abraham Leonard Koolish and George William Ehrlich, and that the present corporate respondent Universal Industries, Inc., is merely a continuation of the business operated by the said individual respondents. The Commission further finds that in the management of the corporate respondent and the previous corporations, the said individual respondents Abraham Leonard Koolish and George William Ehrlich acted with practically the same freedom as though no corporation had existed, and that, so far as corporate action was concerned, these individual respondents were the actors.

CONCLUSION

The aforesaid acts and practices of the corporate respondent Universal Industries, Inc., and the individual respondents Abraham Leonard Koolish and George William Ehrlich 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, 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, and report of the trial examiner thereon, and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondents Universal Industries, Inc., a corporation, and Abraham Leonard Koolish and George William Ehrlich, individually and as officers and directors of Universal Industries, Inc., have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Universal Industries, Inc., a corporation, its officers, representatives, agents, and employees, the respondent Abraham Leonard Koolish, an individual, and respondent George William Ehrlich, an individual, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of sales stimulator plans or devices, including trade cards, circulars, and other advertising material, and tableware and other products used as premium merchandise in connection with the operation of any sales stimulator plan, do forthwith cease and desist from:

1. Misrepresenting, in any manner, the financial condition and assets of respondents' business or the length of time in which said respondents have been engaged in business.

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

3. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors for any stated period of time which is not a true representation of the net earnings or profits which have been made for such stated period of time by a substantial number of respondents' active agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

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

5. Using the term "free" or any other term of similar import or meaning to describe or refer to articles offered as compensation for

distributing respondents' merchandise, unless all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the word "free" or other terms of similar import or meaning and there is no deception as to the price, quality, character, or any other feature of such article as to the services to be performed in connection with obtaining such articles.

6. Misrepresenting the cost of any sales plan or sales stimulator to any dealer or merchant by failing to reveal that additional sums of money must be paid by such dealer or merchant in the operation of such sales plan or the use of such sales stimulator.

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

It is further ordered, That the complaint be dismissed as to the respondent Mrs. Ida B. Koolish.

IN THE MATTER OF

HAMILTON ROSS 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 4040. Complaint, Feb. 26, 1940—Decision, Apr. 24, 1941

Where a corporation engaged in the interstate sale and distribution to department stores and other retailers of chinaware, glassware, plated silverware, cutlery, and other merchandise, purchased by it from manufacturers or dealers in other States—

(*a*) Falsely represented, through use of advertising mats and Dufay color plates which it supplied to its customers for insertion in newspapers published in various cities, and which were thus inserted, that its silverware was "heavily plated," thus implying that it was of a superior quality and grade;

Facts being its said product corresponded approximately to Grade A-1 of household silverware, the lowest grade to which quality marks are regularly applied; and

(*b*) Represented and implied, through inclusion of word "factories" in its corporate and trade name employed on its letterheads, invoices, and other printed matter, that it owned, controlled, or operated a factory or factories where its products were made, and, through use of phrase "Our Factory" in corresponding with customers, that it was the manufacturer of products sold and distributed by it;

When, in fact, it did not own, operate or control any such factory, mill or plant and was not, at time of complaint or for several years prior thereto, manufacturer of its or other products, such as members of purchasing public prefer to deal with directly, as securing them, in their belief, more uniform line of goods, superior quality, lower prices, and other advantages;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true, and of causing it to purchase said products because of such erroneous and mistaken belief:

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

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

Mr. R. P. Bellinger for the Commission.

Pennish & Rashbaum, 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 Hamilton Ross 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, Hamilton Ross Factories, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 666 Lake Shore Drive, Chicago, Ill.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of chinaware, glassware, plated silverware, cutlery, and other merchandise in commerce between and among the various States of the United States and in the District of Columbia.

Respondent purchases said products from various manufacturers thereof, or other dealers therein, located in Columbus, Ohio; Minerva, Ohio; New York, N. Y., and other cities, and sells said products to department stores and other retailers, causing said products, when sold to be transported from its place of business in Chicago, Ill., or from the said places of business of the manufacturers of, or other dealers in, said products from whom respondent purchases the products it sells, located in the States of Ohio, New York and other States, to the purchasers thereof located in various States of the United States other than the State of Illinois or the State in which the shipments originate, 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 business as aforesaid, in connection with the sale and distribution of its products in commerce as herein described, the respondent represents by the use of advertising mats and Dufay color plates which it supplies to its customers to be inserted in newspapers and which are and have been inserted in newspapers, published in various cities of the United States and which circulate among prospective purchasers located in the several States of the United States, that said silverware offered for sale and sold by respondent is "heavily plated," which term implies to the purchasing public that said silverware is of a quality and grade superior to the lower grades of plated silverware.

PAR. 4. In truth and in fact the said silverware so sold and offered for sale by the respondent is not heavily plated, but corresponds approximately to grade A-1 of household silverware, the lowest grade to which quality marks are regularly applied.

PAR. 5. In the course and conduct of its business as hereinbefore described, respondent includes in its corporate and trade name the word "Factories," using the same on its letterheads, invoices, and other printed matter, showing its name as Hamilton Ross Factories, Inc., all of which are sent through the United States mails to its customers and prospective customers in the various States of the United States and in the District of Columbia, thereby implying that respondent owns, controls or operates a factory or factories where its products are manufactured. In corresponding with customers, respondent has made, and does make, use of the phrase "Our Factory" thus implying that the respondent is the manufacturer of the products it sells and distributes.

PAR. 6. In truth and in fact, respondent does not now and has not at any time, manufactured any of said products or any other products. Respondent neither owns, operates, nor controls any factory, mill, or plant, wherein said products sold by it or any other products, are made or manufactured.

PAR. 7. Members of the purchasing public have a preference for buying merchandise, including the products sold by respondent, and other products similar thereto, directly from the manufacturers thereof, believing that by doing so, a more uniform line of goods, superior quality, lower prices, and other advantages can be obtained.

PAR. 8. The acts and practices of the respondent in using the foregoing false, deceptive, and misleading statements and representations with respect to respondent's business and its products, 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 said statements and representations are true, and that respondent's business and products are as represented, and cause a substantial number of the public to purchase respondent's said products because of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices 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 26th day of February 1940, issued and thereafter served its complaint in this proceeding upon said respondent, Hamilton Ross Factories, 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 March 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 by the respondent, through its counsel, Pennish & Rashbaum, 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. Respondent expressly waived the filing of a trial examiner's report upon the evidence. 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, Hamilton Ross Factories, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 666 Lake Shore Drive, Chicago, Ill.

Par. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of chinaware, glassware, plated silverware, cutlery, and other merchandise in commerce between and among the various States of the United States and in the District of Columbia.

Respondent purchases said products from various manufacturers thereof, or other dealers therein, located in Columbus, Ohio; Minerva, Ohio; New York, N. Y., and other cities, and sells said products to department stores and other retailers, causing said products, when

sold to be transported from its place of business in Chicago, Ill., or from the said places of business of the manufacturers of, or other dealers in, said products from whom respondent purchases the products it sells, located in the States of Ohio, New York and other States, to the purchasers thereof located in various States of the United States other than the State of Illinois or the States in which the shipments originate, 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 business as aforesaid, in connection with the sale and distribution of its products in commerce as herein described, the respondent represents by the use of advertising mats and Dufay color plates which it supplies to its customers to be inserted in newspapers and which are and have been inserted in newspapers, published in various cities of the United States and which circulate among prospective purchasers of respondent's products located in the several States of the United States, that said silverware offered for sale and sold by respondent is "heavily plated," which term implies to the purchasers and prospective purchasers of said silverware that said silverware is of a quality and grade superior to the lower grades of plated silverware.

PAR. 4. In truth and in fact the said silverware so sold and offered for sale by the respondent is not heavily plated, but corresponds approximately to grade A–1 of household silverware, the lowest grade to which quality marks are regularly applied.

PAR. 5. In the course and conduct of its business as hereinbefore described, respondent includes in its corporate and trade name the word "Factories," using the same on its letterheads, invoices, and other printed matter, showing its name as Hamilton Ross Factories, Inc., all of which are sent through the United States mails to its customers and prospective customers in the various States of the United States and in the District of Columbia, thereby implying that respondent owns, controls, or operates a factory or factories where its products are manufactured. In corresponding with customers, respondent has made, and does make, use of the phrase "Our Factory," thus implying that the respondent is the manufacturer of the products it sells and distributes.

PAR. 6. In truth and in fact, respondent at the time of the issuance of the complaint herein and for several years prior thereto, did not manufacture any of said products or any other products. Respondent neither owns, operates nor controls any factory, mill or plant, wherein

said products sold by it or any other products are made or manufactured.

PAR. 7. Members of the purchasing public have a preference for buying merchandise, including the products sold by respondent, and other products similar thereto, directly from the manufacturers thereof, believing that by doing so, a more uniform line of goods, superior quality, lower prices and other advantages can be obtained.

PAR. 8. The acts and practices of the respondent in using the foregoing false, deceptive, and misleading statements and representations with respect to respondent's business and its products, 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 said statements and representations are true, and that respondent's business and products are as represented, and cause a substantial number of the public to purchase respondent's said products because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices 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, Hamilton Ross Factories, Inc., a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its chinaware, glassware, plated silverware, cutlery, and other products in commerce, as

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

1. Representing that its plated silverware is heavily plated, or that said silverware is of a quality or grade superior to the lower grades of plated silverware; or that it is superior in quality to the lowest grade of household silverware to which quality marks are regularly applied in the trade; and

2. Using the word "Factories" as a part of respondent's corporate or trade name, or otherwise representing through the use of any other word or term of similar import or meaning, or through any other means or device, or in any manner, that respondent is the manufacturer of the products sold by it, unless and until the respondent actually owns and operates or directly and absolutely controls the plants wherein such products are manufactured.

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

IN THE MATTER OF

JANE BLANCHARD GEARY, TRADING AS DR. JANE BLANCHARD

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

Docket 4449. Complaint, Jan. 24, 1941—Decision, Apr. 24, 1941

Where an individual engaged in interstate sale and distribution of a medicinal preparation designated as "Dr. Blanchard's Female Compound and Regulator," "Dr. Jane Blanchard's Compound Regulator," and "Dr. Blanchard's Regulator"; by means of advertisements disseminated by mail and in newspapers and other advertising literature—

(*a*) Represented that her said preparation was a competent and reliable regulator of conditions peculiar to women, was a competent and effective treatment for delayed or suppressed menstruation, constituted an effective tonic and blood purifier, and was safe and harmless;

Facts being therapeutic properties of said preparation were limited to those of an alcoholic stimulant and irritant laxative, and had no therapeutic value in treatment of the conditions claimed; it was not a tonic or blood purifier, and was not safe and harmless in that it contained the drug aloes in quantities sufficient to be harmful and might aggravate, rather than relieve, female troubles;

(*b*) Failed to reveal facts material in the light of the representations contained in her said advertisements, and that use of said preparation, under conditions prescribed therein or under such conditions as are customary or usual, might cause colitis and produce pelvic congestion, with likelihood of inducing miscarriage in later stages of pregnancy; and

(*c*) Falsely represented, through inclusion of prefix "Dr." in trade name employed by her, and through using in her said advertising material title "Dr." as prefix to her own name, and also setting forth therein specific statement "Prepared by Dr. Jane Blanchard," that she was a physician;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing it, because of such mistaken belief, to purchase her 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.

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

Mr. R. P. Bellinger for the Commission.

Mr. Kenneth N. Graham, 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 Jane Blanchard Geary, an individual, trading as Dr. Jane Blanchard, 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, Jane Blanchard Geary, is an individual trading as Dr. Jane Blanchard, with her principal place of business at 2817 East Street (N. S.), Pittsburgh, Pa., from which address she 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 medicinal preparation designated as "Dr. Blanchard's Female Compound and Regulator," "Dr. Jane Blanchard's Compound Regulator," and "Dr. Blanchard's Regulator."

In the course and conduct of her business respondent causes said medicinal preparation, when sold, to be transported from her 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 medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of 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 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 her said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her 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 and by insertions in newspapers and other advertising literature, are the following:

LADIES—When in need of a true medicine try Dr. Jane Blanchard's Compound Regulator, nothing to equal it.

LADIES—When you need true medicine try Dr. Blanchard's Regulator; used by best people in public and private life.

Dr. Blanchard's Female Compound and Regulator.

Recommended for Suppressed Menstruation
AND AS A TONIC INVIGORATOR AND BLOOD PURIFIER
Contains no injurious substance.
Prepared by Dr. Jane Blanchard.

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 designated as Dr. Blanchard's Female Compound and Regulator, Dr. Jane Blanchard's Compound Regulator, and Dr. Blanchard's Regulator, is a competent and reliable regulator of conditions peculiar to women; that it is a competent and effective treatment for delayed or suppressed menstruation; that it constitutes an effective tonic and blood purifier; and that it is safe and harmless.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading, and untrue. The therapeutic properties of respondent's preparation designated as Dr. Blanchard's Female Compound and Regulator, Dr. Jane Blanchard's Compound Regulator, and Dr. Blanchard's Regulator are limited to those of an alcoholic stimulant and irritant laxative. Said preparation has no therapeutic value in the treatment of delayed or suppressed menstruation or the regulation of conditions peculiar to women. This preparation is not a tonic or blood purifier. Furthermore, said preparation is not safe and harmless, in that it contains the drug aloes in quantities sufficient to be harmful, and may cause colitis and produce pelvic congestions which might aggravate rather than relieve female troubles.

PAR. 6. The advertisements disseminated by the respondent constitute false advertisements for the further 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 preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual may cause colitis and produce pelvic congestion with likelihood of inducing miscarriage in latter stages of pregnancy.

PAR. 7. In the course and operation of her business as aforesaid, the respondent, Jane Blanchard Geary uses the trade name "Dr. Jane Blanchard," and also in the designation of her said medicinal preparation makes use of the title "Dr." in close proximity to and as a prefix

to the name Blanchard which appears in her advertising material disseminated as aforesaid, including the specific statement, "Prepared by Dr. Jane Blanchard." The use by respondent, Jane Blanchard Geary, of the abbreviation "Dr." in close proximity to and as a prefix to the name "Jane Blanchard," in the manner and by the means aforesaid, acts as a representation by respondent, Jane Blanchard Geary, to prospective purchasers of her said medicinal preparation, that respondent is a medical doctor. In truth and in fact, respondent, Jane Blanchard Geary, is not a medical doctor.

PAR. 8. The use by respondent of the foregoing false, deceptive, and misleading statements and representations with respect to her medicinal preparation, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said medicinal preparation.

PAR. 9. 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 24th day of January 1941, issued, and thereafter served, its complaint in this proceeding upon said respondent, Jane Blanchard Geary, an individual, trading as Dr. Jane Blanchard, charging her with use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On February 12, 1941, the respondent filed her 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 through her counsel, Kenneth N. Graham, 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. Respondent also waived 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, 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, Jane Blanchard Geary, is an individual trading as Dr. Jane Blanchard, with her principal place of business at 2817 East Street (N. S.), Pittsburgh, Pa., from which address she 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 medicinal preparation deisgnated as "Dr. Blanchard's Female Compound and Regulator," "Dr. Jane Blanchard's Compound Regulator," and "Dr. Blanchard's Regulator."

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 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 her said product, by various means, for the purpose of inducing, and which are likely to induce, directly, or indirectly, the purchase of her 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 and by insertions in newspapers and other advertising literature, are the following:

LADIES—When in need of a true medicine try Dr. Jane Blanchard's Compound Regulator, nothing to equal it.

LADIES—When you need true medicine try Dr. Blanchard's Regulator; used by best people in public and private life.

Dr. Blanchard's Female Compound and Regulator

Recommended for Suppressed Menstruation
AND AS A TONIC INVIGORATOR
AND BLOOD PURIFIER
Contains no injurious substance.
Prepared by Dr. Jane Blanchard.

PAR. 4. By the use of representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that her preparation designated as Dr. Blanchard's Female Compound and Regulator, Dr. Jane Blanchard's Compound Regulator, and Dr. Blanchard's Regulator, is a competent and reliable regulator of conditions peculiar to women; that it is a competent and effective treatment for delayed or suppressed menstruation; that it constitutes an effective tonic and blood purifier; and that it is safe and harmless.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading, and untrue. The therapeutic properties of respondent's preparation designated as Dr. Blanchard's Female Compound and Regulator, Dr. Jane Blanchard's Compound Regulator, and Dr. Blanchard's Regulator are limited to those of an alcoholic stimulant and irritant laxative. Said preparation has no therapeutic value in the treatment of delayed or suppressed menstruation or the regulation of conditions peculiar to women. This preparation is not a tonic or blood purifier. Furthermore, said preparation is not safe and harmless, in that it contains the drug aloes in quantities sufficient to be harmful, and may cause colitis and produce pelvic congestions which might aggravate rather than relieve female troubles.

PAR. 6. The advertisements disseminated by the respondent constitute false advertisements for the further 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 cause colitis and produce pelvic congestion with likelihood of inducing miscarriage in latter stages of pregnancy.

PAR. 7. In the course and operation of her business as aforesaid, the respondent, Jane Blanchard Geary, uses the trade name "Dr. Jane Blanchard," and also in the designation of her said medicinal preparation makes use of the title "Dr." in close proximity to and as a prefix to the name Blanchard, which appears in her advertising material disseminated as aforesaid, including the specific statement,

"Prepared by Dr. Jane Blanchard." The use by respondent, Jane Blanchard Geary, of the abbreviation "Dr." in close proximity to and as a prefix to the name "Jane Blanchard," in the manner and by the means aforesaid, acts as a representation by respondent, Jane Blanchard Geary, to prospective purchasers of her said medicinal preparation, that respondent is a medical doctor. In truth and in fact, respondent, Jane Blanchard Geary, is not a medical doctor.

PAR. 8. The use by respondent of the foregoing false, deceptive, and misleading statements and representations with respect to her medicinal preparation, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said medicinal preparation.

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, Jane Blanchard Geary, an individual, trading as Dr. Jane Blanchard, or trading under any other name, her agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of her medicinal preparation designated

as "Dr. Blanchard's Female Compound and Regulator," "Dr. Jane Blanchard's Compound Regulator," and "Dr. Blanchard's Regulator," or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other names, do herewith 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 respondent's preparation is a competent or reliable regulator of conditions peculiar to women, or possesses any therapeutic value in the treatment of delayed or suppressed menstruation; that said preparation is a tonic or blood purifier; that said preparation is safe or harmless; or which advertisement uses the term "Dr." or "Doctor" as a part of respondent's trade name or as a part of the name of said preparation, or which advertisement otherwise represents that respondent is a medical doctor; or which advertisement fails to reveal that the use of said preparation may cause colitis and produce pelvic congestion with likelihood of inducing miscarriage in latter stages of pregnancy.

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 colitis and produce pelvic congestion with likelihood of inducing miscarriage in latter stages of pregnancy.

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 the service upon her of this order, said respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which she has complied with this order.

IN THE MATTER OF

MEDORA WHINREY, TRADING UNDER THE STYLE AND FIRM NAME OF GLY-CAS MEDICINE COMPANY, AND ROBERT B. WHINREY

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

Docket 4432. Complaint, Dec. 21, 1940—Decision, Apr. 25, 1941

Where two individuals respectively engaged as proprietress and manager and, in their individual capacities also, in interstate sale and distribution of their Gly-Cas medicinal product or preparation; by means of advertisements disseminated by various means and including quotations at length from testimonial or purported testimonial endorsements—

(*a*) Represented, directly and by implication, that their preparation was a cure or remedy and competent and effective treatment for constipation, indigestion, gas, bloated and sour stomach, rheumatic and neuritis pains, sore and aching muscles, limbs, and joints; backaches, dizziness, nervousness, kidney trouble, sleeplessness, biliousness, and headaches; and

(*b*) Represented that such disorders and conditions are typical symptoms of constipation or faulty elimination, and that use of their preparation will completely cleanse the system, remove toxic impurities, and prevent invasion of intestinal glands by bacteria, and that it is a body conditioner and purifier which will restore one to normal health;

Facts being product in question is not a cure or remedy for constipation, has no therapeutic value in the treatment thereof in excess of temporary relief afforded by causing a partial evacuation of the intestinal tract, and will not accomplish the results above claimed; and conditions above set forth are often caused by other systemic disorders than constipation, in which event their said product would have no therapeutic effect;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such false representations were true and of thereby inducing it 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 and deceptive acts and practices in commerce.

Mr. John W. Carter, 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 Medora Whinrey,

individually and trading under the style and firm name of Gly-Cas Medicine Co., and Robert B. Whinrey, 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 Medora Whinrey is an individual trading under the style and firm name of Gly-Cas Medicine Co. with her principal place of business located at 533, The Johnson, Muncie, Ind.

PAR. 2. Respondent Robert B. Whinrey is an individual and is manager of Gly-Cas Medicine Co. This respondent, acting in his indivdual capacity, for his own interest and as manager of Gly-Cas Medicine Co., determines, directs, and administers or assists in determining, directing, and administering the business policies, and is personally and actively engaged in controlling, conducting, and operating the business activities of the aforesaid Gly-Cas Medicine Co.

Respondent Robert B. Whinrey and respondent Medora Whinrey have jointly, severally, and individually, and under the style and firm name of Gly-Cas Medicine Co., engaged in the business activities, at the place of business as aforesaid, as hereinafter set forth.

PAR. 3. Acting in their individual capacities and trading under the style and firm name of Gly-Cas Medicine Co., the respondents are now, and for more than 1 year last past have been, engaged in the advertising, sale, and distribution of a medicinal product or preparation designated by "Gly-Cas," in commerce among and between the various States of the United States.

Respondents cause said medicinal preparation when sold to be transported from respondents' place of business in the State of Indiana to the purchasers thereof located in various other States of the United States and the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in the said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid business respondents have disseminated and are now disseminating, and have caused and are now causing, the dissemination of false advertisements concerning their said preparation "Gly-Cas" by various means in commerce as commerce is defined by the Federal Trade Commission Act; and the 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 preparation in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false statements and representations contained in the aforesaid advertisements, disseminated and caused to be disseminated by respondents as aforesaid, are the following:

"IS WONDERFUL TO FEEL SO GOOD AGAIN" DECLARES MRS. LOGAN

Decatur Lady Was Never As Pleasantly Surprised As With the Results Gly-Cas Gave Her; Says, "Words Cannot Express Her Appreciation of the Modern Herbal Remedy."

"For about twenty years before I began Gly-Cas I had felt miserable," said Mrs. Nora Logan, 1414 Fifth Ave., South, a native of this section and well known resident of this city, recently in talking with the Special Gly-Cas Man who is daily meeting the local public at

(Picture of Mrs. Nora Logan)

the Loyd's Drug Store, this city.

"Faulty bowel action began my health problems," continued Mrs. Logan, "I was often confined to bed, lacked the strength to do anything and what little housework I tried to do was an awful drudgery for me. Very few foods I ate agreed with me and most of them caused me awful distress with gas, bloating and indigestion after every meal. I became extremely nervous, was on such a strict diet I lost over thirty pounds and it seemed I simply could not locate a medicine to give me the results I wanted. My kidneys acted so frequently that my sleep and rest was disturbed, dreadful pains settled across my back and those sharp, stabbing pains were often more than I felt I could endure. But in spite of the failure of the many medicines I tried in my case I finally got results with Gly-Cas * * * it seemed to have just what I had been wanting.

"A good friend recommended that I try this Gly-Cas remedy and now I am so thankful I followed this advice," continued Mrs. Logan, "Never was I so surprised as when this vegetable capsule remedy began to give me the first relief I had had in many years. My bowels began to act regularly and with relief from the effects of those clogged intestinal impurities I was soon feeling better than I had even hoped for. Soon I was eating and enjoying foods I had dared not touch before, am not troubled with gas, bloating, or indigestion after eating, sleep fine, am not so nervous and really enjoy living again. I eat nourishing foods now and enjoy them too, have gained eight pounds and have ample strength and energy to do all my own work without tiring. Even those aches and pains do not bother me now and it is really hard for my words to express my true appreciation of all these Gly-Cas capsules have done for me."

AGONY OF STABBING PAIN HAS LEFT HIS SHOULDERS AND LEGS

Huntington Man Now Walks Good, Sleeps Well; Has Gained Twenty Pounds; Mr. Albert Elkins So Happy With Surprising Action of the Gly-Cas

There are hundreds of Huntington residents today who appreciate the TRUE VALUE of this modern capsule remedy, Gly-Gas and have only the highest of praise for it. They have learned through

(Picture of Mr. Albert Elkins)

actual use how Gly-Cas tends to improve digestion, relieve sourness, gas and bloating, dizzy spells, biliousness, so-called rheumatic and neuritis pains, nervousness, headaches, backaches which so frequently are caused by faulty bowel action and which cannot be understood or accounted for.

"I am now enjoying better health than I have in years and want to give full credit to this Gly-Cas remedy," said Mr. Albert Elkins, 1211 26th Street, Huntington, a well known and highly respected local gentleman who has lived here a number of years, recently in praising Gly-Cas' action to the Gly-Cas Man who is daily meeting the local people at the Boggess Drug Store, 906 Third Ave., this city;

"A stubborn case of constipation had bothered me for years," continued Mr. Albert Elkins. "In later years I developed those terrible so-called neuritis pains and what I endured with this awful suffering could not possibly be described in words alone. My shoulders ached and pained terribly and those sharp, stabbing pains in my arms and legs were almost more than I could stand at times. I could hardly walk at all and I could not sleep when the suffering was so severe. I got practically no rest in my condition for most nights it was past midnight before I could get to sleep. Being so miserable all the time I lost weight and strength and could see nothing ahead of me but continued suffering. But now * * * thanks to Gly-Cas I am feeling like my former self again.

"I did not know a medicine like Gly-Cas existed until I began its use," continued Mr. Elkins. "From the first few doses I began to show rapid improvement and now my bowels are regular and with relief from the effects of those clogged impurities I am feeling better than I have in years. Those awful aches and pains have gone now, sleep and rest well, have gained twenty pounds and have only the highest of praise to offer for this modern capsule remedy. No wonder Gly-Cas has become so popular here in Huntington in this short time it has been known here * * * for it is a medicine of merit."

Assist nature in this condition; prevent invasion of bacteria into the intestinal glands by permitting proper elimination with Gly-Cas' use.

Through the use of the statements and representations hereinabove set forth and in statements and representations similar thereto, not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of said preparation, respondents represent, directly and by implication, that their said preparation is a cure or remedy for constipation; indigestion; gas; bloated and sour stomach; rheumatic and neuritis pains; sore and aching muscles, limbs, and joints; backaches; dizziness; nervousness; kidney trouble; sleeplessness; biliousness; and headaches, and that it constitutes a competent and effective treatment for such conditions.

It is further represented by the respondents that the aforesaid disorders and conditions are typical symptoms of constipation or faulty elimination and that the existence of one or more of such symptoms indicates that constipation is the basic cause of such disorders and conditions. Respondents also represent that the use of their preparation "Gly-Cas" will completely cleanse the system, remove toxic impurities, and prevent invasion of intestinal glands by bacteria, and that it is a body conditioner and purifier which will restore one to normal health.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. Respondents' preparation "Gly-Cas" is not a cure or remedy for constipation and has no therapeutic value in the treatment thereof, in excess of the temporary relief afforded by causing a partial evacuation of the intestinal tract. It will not completely cleanse the system, remove toxic impurities, or prevent invasion of intestinal glands by bacteria. Said preparation is not a body conditioner or purifier and will not restore normal health.

The disorders and conditions such as indigestion; gas; bloated and sour stomach; rheumatic and neuritis pains; sore and aching muscles, limbs, and joints; backache; dizziness; nervousness; kidney trouble; sleeplessness; biliousness; and headaches are not typical symptoms of constipation or faulty elimination but are often caused by other systemic disorders. When such conditions or disorders are due to causes other than constipation or faulty elimination, the use of respondents' preparation will have no therapeutic effect. To the extent that constipation or faulty elimination may be the contributing factor to, or the basic cause of, such conditions or disorders, respondents' preparation has no therapeutic value in the treatment thereof in excess of the temporary relief afforded by causing a partial evacuation of the intestinal tract.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations, and others of a similar nature disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondents' 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 the 21st day of December 1940, issued and subsequently served its complaint in this proceeding upon respondents Medora Whinrey and Robert B. Whinrey, charging said Medora Whinrey, individually and trading under the style and firm name of Gly-Cas Medicine Co., and Robert B. Whinrey, individually, with unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

Subsequently, respondents jointly and severally, in their individual capacities and trading as Gly-Cas Medicine Co., filed their answer in which 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, and further waived the filing of briefs and the presentation of oral argument.

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 Medora Whinrey is an individual trading under the style and firm name of Gly-Cas Medicine Co. with her principal place of business located at 533, The Johnson, Muncie, Ind.

Par. 2. Respondent Robert B. Whinrey is an individual and is manager of Gly-Cas Medicine Co. This respondent, acting in his individual capacity, for his own interest and as manager of Gly-Cas Medicine Co., determines, directs, and administers or assists in determining, directing, and administering the business policies, and is personally and actively engaged in controlling, conducting, and operating the business activities of the aforesaid Gly-Cas Medicine Co.

Respondent Robert B. Whinrey and respondent Medora Whinrey have jointly, severally, and individually, and under the style and firm name of Gly-Cas Medicine Co., engaged in the business activities, at the place of business as aforesaid, as hereinafter set forth.

PAR. 3. Acting in their individual capacities and trading under the style and firm name of Gly-Cas Medicine Co., the respondents are now, and for more than 1 year last past have been, engaged in the advertising, sale, and distribution of a medicinal product or preparation, designated as "Gly-Cas," in commerce among and between the various States of the United States.

Respondents cause said medicinal preparation when sold to be transported from respondents' place of business in the State of Indiana to the purchasers thereof located in various other States of the United States and the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in the said medicinal preparation in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their aforesaid business respondents have disseminated and are now disseminating, and have caused and are now causing, the dissemination of false advertisements concerning their said preparation "Gly-Cas" by various means in commerce, as commerce is defined by the Federal Trade Commission Act; and the 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 preparation in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false statements and representations contained in the aforesaid advertisements, disseminated and caused to be disseminated by respondents as aforesaid, are the following:

"IS WONDERFUL TO FEEL SO GOOD AGAIN" DECLARES MRS. LOGAN

Decatur Lady Was Never As Pleasantly Surprised As With the Results Gly-Cas Gave Her; Says, "Words Cannot Express Her Appreciation of the Modern Herbal Remedy."

"For about twenty years before I began Gly-Cas I had felt miserable," said Mrs. Nora Logan, 1414 Fifth Ave., South, a native of this section and well known resident of this city, recently in talking with the Special Gly-Cas Man who is daily meeting the local public at

(Picture of Mrs. Nora Logan)

the Loyd's Drug Store, this city.

"Faulty bowel action began my health problems," continued Mrs. Logan, "I was often confined to bed, lacked the strength to do anything and what little housework I tried to do was an awful drudgery for me. Very few foods I ate agreed with me and most of them caused me awful distress with gas, bloating and indi-

gestion after every meal. I became extremely nervous, was on such a strict diet I lost over thirty pounds and it seemed I simply could not locate a medicine to give me the results I wanted. My kidneys acted so frequently that my sleep and rest was disturbed, dreadful pains settled across my back and those sharp, stabbing pains were often more than I felt I could endure. But in spite of the failure of the many medicines I tried in my case I finally got results with Gly-Cas * * * it seemed to have just what I had been wanting.

"A good friend recommended that I try this Gly-Cas remedy and now I am so thankful I followed this advice," continued Mrs. Logan, "Never was I so surprised as when this vegetable capsule remedy began to give me the first relief I had had in many years. My bowels began to act regularly and with relief from the effects of those clogged intestinal impurities I was soon feeling better than I had even hoped for. Soon I was eating and enjoying foods I had dared not touch before, am not troubled was gas, bloating or indigestion after eating, sleep fine, am not so nervous and really enjoy living again. I eat nourishing foods now and enjoy them too, have gained eight pounds and have ample strength and energy to do all my own work without tiring. Even those aches and pains do not bother me now and it is really hard for my words to express my true appreciation of all these Gly-Cas capsules have done for me."

AGONY OF STABBING PAIN HAS LEFT HIS SHOULDERS AND LEGS

Huntington Man Now Walks Good, Sleeps Well; Has Gained Twenty Pounds; Mr Albert Elkins So Happy With Surprising Action of the Gly-Cas

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There are hundreds of Huntington residents today who appreciate the TRUE VALUE of this modern capsule remedy, Gly-Cas and have only the highest of praise for it. They have learned through actual use how Gly-Cas tends to

(Picture of Mr. Albert Elkins)

improve digestion, relieve sourness, gas and bloating, dizzy spells, biliousness, so-called rheumatic and neuritis pains, nervousness, headaches, bachaches which so frequently are caused by faulty bowel action and which cannot be understood or accounted for.

"I am now enjoying better health than I have in years and want to give full credit to this Gly-Cas remedy," said Mr. Albert Elkins, 1211 26th Street, Huntington, a well known and highly respected local gentleman who has lived here a number of years, recently in praising Gly-Cas' action to the Gly-Cas Man who is daily meeting the local people at the Boggess Drug Store, 906 Third Ave., this city;

"A stubborn case of constipation had bothered me for years," contended Mr. Albert Elkins. "In the later years I developed those terrible so-called neuritis pains and what I endured with this awful suffering could not possibly be described in words alone. My shoulders ached and pained terribly and those sharp, stabbing pains in my arms and legs were almost more than I could stand at times. I could hardly walk at all and I could not sleep when the suffering was so severe. I got practically no rest in my condition for most nights it was past midnight before I could get to sleep. Being so miserable all the time I lost weight and strength and could see nothing ahead of me but

continued suffering. But now * * * thanks to Gly-Cas I am feeling like my former self again.

"I did not know a medicine like Gly-Cas existed until I began its use," continued Mr. Elkins. "From the first few doses I began to show rapid improvement and now my bowels are regular and with relief from the effects of those clogged impurities I am feeling better than I have in years. Those awful aches and pains have gone now, sleep and rest well, have gained twenty pounds and have only the highest of praise to offer for this modern capsule remedy. No wonder Gly-Cas has become so popular here in Huntington in this short time it has been known here * * * for it is a medicine of merit."

Assist nature in this condition; prevent invasion of bacteria into the intestinal glands by permitting proper elimination with "Gly-Cas" use.

Through the use of the statements and representations hereinabove set forth and in statements and representations similar thereto, not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of said preparation, respondents represent, directly and by implication, that their said preparation is a cure or remedy for constipation; indigestion; gas; bloated and sour stomach; rheumatic and neuritis pains; sore and aching muscles, limbs, and joints; backaches; dizziness; nervousness; kidney trouble; sleeplessness; biliousness; and headaches, and that it contitutes a competent and effective treatment for such conditions.

It is further represented by the respondents that the aforesaid disorders and conditions are typical symptoms of constipation or faulty elimination and that the existence of one or more of such symptoms indicates that constipation is the basic cause of such disorders and conditions. Respondents also represent that the use of their preparation "Gly-Cas" will completely cleanse the system, remove toxic impurities, and prevent invasion of intestinal glands by bacteria, and that it is a body conditioner and purifier which will restore one to normal health.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. Respondents' preparation "Gly-Cas" is not a cure or a remedy for constipation and has no therapeutic value in the treatment thereof, in excess of the temporary relief afforded by causing a partial evacuation of the intestinal tract. It will not completely cleanse the system, remove toxic impurities, or prevent invasion of intestinal glands by bacteria. Said preparation is not a body conditioner or purifier and will not restore normal health.

The disorders and conditions such as indigestion; gas; bloated and sour stomach; rheumatic and neuritis pains; sore and aching muscles, limbs, and joints; backache; dizziness; nervousness; kidney trouble;

sleeplessness; biliousness; and headaches are not typical symptom of constipation or faulty elimination but are often caused by other systemic disorders. When such conditions or disorders are due to causes other than constipation or faulty elimination, the use of respondents' preparation will have no therapeutic effect. To the extent that constipation or faulty elimination may be the contributing factor to, or the basic cause of, such conditions or disorders, respondents' preparation has no therapeutic value in the treatment thereof in excess of the temporary relief afforded by causing a partial evacuation of the intestinal tract.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations, and others of a similar nature disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondents' 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 joint and separate 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 the 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 respondents Medora Whinrey, individually and trading under the style and firm name of Gly-Cas Medicine Co., or under any other trade name, and Robert B. Whinrey, individually, and 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 preparation "Gly-

Cas," or any other preparation of substantially similar composition 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 advertisement represents, directly or through inference:

(*a*) That indigestion; gas; bloated or sour stomach; rheumatic or neuritis pains; sore or aching muscles, limbs, or joints; backaches; dizziness; nervousness; kidney trouble; sleeplessness; biliousness; or headaches are typical or usual symptoms of constipation or faulty elimination.

(*b*) That respondents' medicinal preparation "Gly-Cas" is a cure or remedy or constitutes a competent or effective treatment for indigestion; gas; bloated or sour stomach; rheumatic or neuritis pains; sore or aching muscles, limbs, or joints; backaches; dizziness; nervousness; kidney trouble; sleeplessness; biliousness; or headaches.

(*c*) That respondents' preparation is a cure or remedy for constipation or that it has any therapeutic value in the treatment thereof in excess of the temporary relief afforded by causing a partial evacuation of the intestinal tract.

(*d*) That said preparation will completely cleanse the system or remove toxic impurities.

(*e*) That said preparation will prevent invasion of intestinal glands by bacteria.

(*f*) That said preparation is a body conditioner and purifier which will restore one to normal health.

(*g*) That said preparation has any therapeutic value at all in the treatment of the symptoms, conditions, or disorders set forth in subsection (*a*) of paragraph 1 hereof, when such symptoms, conditions, or disorders are due to causes other than constipation or faulty elimination.

(*h*) That said preparation has any therapeutic value in the treatment of any of the symptoms, conditions, or disorders set forth in subsection (*a*) of paragraph 1 hereof, other than that furnished by causing a partial evacuation of the intestinal tract.

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 medicinal prepara-

tion "Gly-Cas," which advertisement contains any of the representations prohibited in paragraph 1 hereof, and the respective subdivisions thereof.

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

IN THE MATTER OF

HARRY GEMSON

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

Docket 3716. Complaint, Feb. 18, 1939—Decision, Apr. 26, 1941

Where an individual engaged in competitive interstate sale and distribution of outer garment materials, cloth, and allied products, acting as selling agent for various woolen manufacturers; in advertising a certain fabric containing approximately 10 percent camel hair, in trade papers and periodicals and in circulars and other printed matter—

(*a*) Made use of and featured the designation "Camelite," together with picturizations of a camel and such statements as "a rich lustrous fleece," and "the rich lustrous fleece that has won approval of leading buyers," and

(*b*) Set forth on labels which he caused to be placed on the material in question the statement "Genuine Camelite," together with picturization of a camel;

With result of representing falsely through such designations, statements and picturizations that the product in question was composed entirely of camel's hair, and with tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that his said product was composed entirely of such hair, and with consequence that a number of consuming public purchased a substantial volume of his fabric, and trade was diverted unfairly to him from competitors:

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

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

Mr. J. R. Phillips, Jr., for the Commission.

Mr. Philip Pearlman, 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 Harry Gemson, 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, Harry Gemson, an individual, with his office and principal place of business located at 450 Seventh Avenue, New York, N. Y., is now engaged, and for many years last past has been engaged, as a selling and commission agent for outer garment materials, cloth and allied products. Respondent offers for sale, now sells and distributes, and has sold and distributed, such materials and cloth to retail dealers and other customers located in the various States of the United States and in the District of Columbia.

Respondent causes said products when sold to be shipped from his place of business in New York, N. Y., to the purchasers thereof located in the various States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in said products so sold by him 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 herein mentioned has been in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution of outer garment materials, cloth, and other allied 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 said business, and for the purpose of inducing the purchase of said outer garment materials, cloth, and other allied products, respondent has made, by means of labels affixed and attached to said products, and by means of suggesting and assisting in the phrasing or wording of advertisements, and by bearing a part of the cost of said advertisements used by the retailers of said cloth, which are inserted in newspapers and advertising periodicals having a general interstate circulation, representations concerning the character, quality, nature, fiber, and fabric of his cloth or cloths. Among and typical of said representations made by the respondent, are the following:

GENUINE

CAMELITE

(Pictorial Representation of camel)

A

GEM FABRIC

Camelite—the fabric of the hour—the rich lustrous fleece that has won approval of leading buyers of teen coats and girls' coats.

Genuine Camelite—a gem fabric.

Camelite has been created by Harry Gemson.

Today more than ever before Camel-hair is being used by the masses. It is the only staple fabric never getting out of style and is made exclusively for

us by a high-grade woolen mill established nearly half a century ago, who with their manipulation produced from fibre to finished fabric, insuring uniformity of quality.

USE GENUINE CAMELITE

(s) Harry Gemson.

Said statements, and similar statements, appearing on labels affixed to respondent's outer-garment materials and cloth and in the aforesaid advertising matter, purport to be descriptive of the character, quality, nature, fiber and fabric of said materials and cloth, and represent that the same is made, in whole or predominant part, of camels' hair. There exists among dealers and consumers a substantial demand for materials made in whole or predominant part of camels' hair.

PAR. 4. The representations made by the respondent with respect to the character, quality, nature, fiber and fabric of his cloth, are grossly exaggerated, false, misleading and untrue. In truth and in fact the outer garment materials or cloth of the respondent are not in whole or in predominant part of camels' hair. The true fact is that respondent's cloth contains approximately 10 percent genuine camels' hair.

PAR. 5. There are among respondent's competitors, many who manufacture, distribute and sell cloth for outer garments, who do not in any way misrepresent the quality or character of their respective materials.

PAR. 6. The false and misleading statements set out and referred to in paragraph 3 hereof were and are calculated to, have had and have, a tendency and capacity to deceive and mislead dealers and consumers into the erroneous belief that Camelite cloth is made, in whole or in predominant part, of camels' hair, and unfairly to divert business to respondent from his said competitors who truthfully represent the fiber make-up of the cloth they sell. 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. 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 February 18, A. D. 1939, issued and subsequently served its complaint in this proceeding upon the respondent, Harry Gemson, an individual, charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John R. Phillips, Jr., attorney for the Commission, and in opposition to the allegations of the complaint by Philip Pearlman, 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, the report of the trial examiner upon the evidence, brief in support of the complaint (no brief having been filed by the respondent or oral argument 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, Harry Gemson, is an individual, with his office and principal place of business located at 450 Seventh Avenue, New York, N. Y. Respondent is now, and for several years last past has been, engaged in the sale and distribution of outer garment materials, cloth, and allied products in commerce among and between the various States of the United States. During this period the respondent has generally acted as selling agent for various woolen manufacturers on a commission basis and offers for sale and sells such products to retail dealers and other customers located in various States of the United States. Respondent causes said products, when sold, to be shipped from his place of business in the State of New York, or from the places of business of the manufacturer of such merchandise, to purchasers thereof located in various States of the United States other than the State of New York or States in which

such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution of outer garment materials, cloth, and other allied products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The Commission finds that some time prior to 1937 the respondent, either individually or as a member of a firm, represented the Tingue Manufacturing Co. as selling agent for a woolen fabric designated "Camelite." The Tingue Manufacturing Co. having gone out of business, the respondent later, as an individual, engaged in the sale and distribution of woolen fabrics manufactured by the Wallace Woolen Mills, Inc. At the request of the respondent, the Wallace Woolen Mills, Inc., produced a fabric containing approximately 10 percent camel hair, which fabric was designated "Camelite."

The Commission further finds that during the year 1937 and for a portion of the year 1938 the respondent was engaged solely in the sale and distribution of woolen fabrics, and particularly of the fabric designated "Camelite," manufactured by the Wallace Woolen Mills, Inc.

PAR. 4. In the course and conduct of his said business and for the purpose of inducing the purchase of said fabric designated as "Camelite," the respondent placed certain advertisements in various trade papers and periodicals having a general circulation among and between the various States of the United States, describing said fabric designated as "Camelite." Said advertisements were placed in such periodicals in the name of the respondent, a portion of the cost of which having been paid by the Wallace Woolen Mills, Inc. Among and typical of the representations made by the respondent in such advertisements are the following:

CAMELITE

Genuine Camelite

(A pictorial representation
of a camel)

A Gem Fabric

THE FABRIC OF THE HOUR

A rich lustrous fleece in the
season's latest colors

* * *

A Fabric Created by

HARRY GEMSON

225 West 34th Street New York

CAMELITE

The Fabric
of the Hour

The rich lustrous fleece that has
won approval of leading buyers of
teen coats and girls' coats.

GENUINE CAMELITE

(A pictorial representation
of a camel)

A Gem Fabric

* * * *

Camelite has been created by

HARRY GEMSON

225 West 34th Street New York

CAMELS

in America

Genuine Camelite

(A pictorial representation
of a camel)

A Gem Fabric

* * * *

Today more than ever before, Camel hair is being used by the masses. It is the only staple fabric, never getting out of style, and is made exclusively for us by a high grade woolen mill established nearly half a century ago who with their manipulation produce from fiber to finished fabric insuring uniformity of quality.

PAR. 5. In addition to the advertisements hereinabove described, the respondent has used the name "Camelite," together with the above-described pictorial representation, on various circulars and other printed matter offering for sale and describing fabric designated as "Camelite." The respondent has also caused labels to be placed on said material reading as follows:

Genuine

CAMELITE

(Pictorial representation
of a camel)

A Gem Fabric

PAR. 6. The Commission further finds that the use of the word "Camelite" to designate or describe respondent's product, the use of the representations contained in the advertisements hereinabove set forth, and the use of labels on said product bearing the name "Camelite" and a pictorial representation of a camel constitute representations that the product sold by the respondent under the designation "Camelite" is composed entirely of camel's hair, when in truth and in fact respondent's product designated "Camelite" contains only approximately 10 percent genuine camel's hair.

PAR. 7. The Commission further finds that the use by the respondent of the foregoing false, deceptive, and misleading statements and the designation of respondent's product as "Camelite" in advertising and upon labels and the use of the pictorial representation of a camel in various advertising and upon labels, had a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that respondent's product so designated and described was composed entirely of camel's hair. On account of this erroneous and mistaken belief a number of the consuming public have purchased a substantial volume of respondent's fabrics, with the result that trade has been diverted unfairly to the respondent from his competitors who are also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of various woolen and camel hair fabrics.

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, answer of the respondent, testimony, and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and report of the trial examiner thereon, and brief filed herein by John R. Phillips, Jr., counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Harry Gemson, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of outer garment materials, cloth, and allied products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "camel's hair" or "camel," or any other term or terms descriptive of camel's hair, in advertising or otherwise, to describe, designate, or refer to any fabric or product which is not composed wholly of camel's hair; provided, however, that in the case of fabrics or products composed in part of camel's hair and in part of other fibers, such terms may be used as descriptive of such camel's hair content if there are used in immediate connection and conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber thereof.

2. Using the term "Camelite" or any other term which includes the word "camel" or any colorable simulation thereof, or using any other term of similar import or meaning on labels or otherwise, to describe, designate, or refer to any fabric or product which is not composed wholly of camel's hair; provided, however, that in the case of fabrics or products composed in part of camel's hair and in part of other

fibers, such term may be used as descriptive of the camel's hair content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof.

3. Using any pictorial design of a camel in connection with any description of, or reference to, fabrics or products in which camel's hair is not the predominating fiber.

4. Representing, in any manner, that fabrics or products offered for sale or sold by respondent contain camel's hair in greater quantity than is actually the case.

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 no provisions contained in this order shall be construed as authorizing or permitting, after July 14, 1941, the labeling of any wool product in any manner other than in strict conformity with the provisions of the "Wool Products Labeling Act of 1939."

IN THE MATTER OF

HARTIG DRUG COMPANY, ALSO TRADING AS H. K. PHARMACEUTICAL LABORATORIES, AND A. J. HARTIG, AS PRESIDENT OF HARTIG DRUG COMPANY, INDIVIDUALLY AND TRADING AS H. K. PHARMACEUTICAL LABORATORIES

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

Docket 4406. Complaint, Mar. 4, 1941—Decision, Apr. 26, 1941 [1]

Where a corporation and an individual, who, as its president, controlled and directed its policies and activities as a family business, engaged in interstate sale and distribution of various medicinal preparations, including certain products purportedly for the relief of delayed menstruation, consisting of five treatments designated as "Menstruaid Nos. 1, 2, 3, 4, and 5"; by means of advertisements disseminated through the mails and by circulars and other printed or written matter—

(*a*) Represented that said preparations constituted a competent, effective and positive remedy for delayed menstruation, were harmless, and would normalize the most stubborn menstrual troubles speedily, conveniently, and painlessly; which claims were false, and said preparations were not safe or harmless, in that they contained the drugs ergot, aloes, and cottonroot bark, and use thereof 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;

(*b*) Represented that said preparations constituted a scientific remedy which was fully guaranteed; facts being they did not constitute a scientific remedy for said conditions, were not fully guaranteed in that all said corporation and individual would do in connection with such guarantee was to furnish an additional supply designated as "Super Strength" at reduced price of $5 upon failure of purchaser to obtain desired results; and

(*c*) Failed to reveal facts material in the light of said representations, and that use of such preparations under the conditions prescribed therein or under such as are customary or usual, might cause gastrointestinal disturbances, pelvic hemorrhage, uterine infection and blood poisoning, as noted above;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false advertisements were true, and of inducing it, because of such belief, to purchase their medical preparations containing injurious drugs:

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. Eldon P. Schrup for the Commission.

[1] Amended.

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 Hartig Drug Company, a corporation, also trading as H. K. Pharmaceutical Laboratories, and A. J. Hartig, individually, as president of the Hartig Drug Company, and trading as H. K. Pharmaceutical Laboratories, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Hartig Drug Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, trading as H. K. Pharmaceutical Laboratories, with its office and principal place of business located at 756 Main Street, Dubuque, Iowa. Respondent A. J. Hartig and family are the principal officers and stockholders of said corporation and respondent A. J. Hartig as its president controls and directs the policies and activities of said corporate respondent.

Respondent A. J. Hartig is an individual trading and doing business as H. K. Pharmaceutical Laboratories with his office and principal place of business occupying the same premises as that of the Hartig Drug Company located at 756 Main Street, Dubuque, Iowa.

PAR. 2. The respondents are now, and for more than two years last past have been, engaged in the sale and distribution of various medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia. Among the preparations so sold and distributed by the respondents are certain medicinal preparations purportedly for the relief of delayed menstruation which consist of five treatments designated as "Menstruaid Nos. 1, 2, 3, 4, and 5."

Respondents cause said preparations when sold to be transported from their place of business in the State of Iowa to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said 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 their business, as aforesaid, the respondents have disseminated and have caused the dissemination of false advertisements concerning their said preparations by United

States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and have disseminated and have caused the dissemination of false advertisements concerning their said preparations by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as herein set forth by United States mails and by circulars and other printed or written matter, are the following:

I Wonder if I'll BE DELAYED This Month?

Happy Days are Here for MARRIED WOMEN.

At last science offers married women relief when nature fails. "Menstruaid" will speedily relieve and normalize the most stubborn overdue and discouraging delayed female condition. The action is reported to be quick, painless, harmless and convenient . . . Easy to use . . . speedy, positive results without interference with your work.

CROSS OUT YOUR WORRY DAYS

Every woman has a right to live and enjoy her life. Now banish worry and marked calendar days forever. "Menstruaid" is a scientific remedy, consisting of 5 different treatments—

No. 1. A liquid taken 4 times a day.

No. 2. Tablets taken each night.

No. 3. A powder used in hot bath each night.

No. 4. A powder taken in hot water each night.

No. 5. A suppository to be used each night.

All in one kit, with simple directions.

COMPLETE GUARANTEE

of the manufacturers—H. K. Pharmaceutical Laboratories, Dubuque, Iowa, in each package.

Naturally a scientific compound that will do the work effectively is worth its cost—Price of "Menstruaid" complete treatment $10.00.

"Menstruaid" is registered in United States Patent Office, No. 315,537—Get the genuine from your Druggist today.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, respondents have represented that their medicinal preparations, known as "Menstruaid Nos. 1, 2, 3, 4, and 5" constitute a competent and effective remedy for delayed menstruation; that said preparations are harmless, and will positively bring about a return of normal menstruation and normalize the most stubborn cases of menstrual

troubles speedily, conveniently and painlessly; and that said preparations constitute a scientific remedy which is fully guaranteed.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents as hereinbefore set forth are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparations do not constitute a competent or effective treatment for delayed menstruation. Said preparations do not constitute a scienific remedy for delayed menstruation and are not fully guaranteed. All that the respondents will do in connection with such guarantee is to furnish an additional supply designated as "Super Strength" at a reduced price of $5.00 upon the failure of the purchaser to obtain the desired results. This form of compliance with the so-called guarantee is not made known to the purchaser until after the purchase is completed and the package opened. Respondents' preparations will not normalize the most stubborn cases of menstrual trouble speedily, conveniently or painlessly. Moreover, said preparations are not safe or harmless as they contain the drugs ergot, aloes and cotton root bark in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said preparations may result in gastrointestinal disturbances, catharsis, nausea and vomiting with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage, and in those cases where said preparations are 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.

The use of said preparations may also produce a severe circulatory condition by the congestion of the blood vessels and 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 or irreparable injury to health.

PAR. 6. The advertisements disseminated by the respondents constitute false advertisements for the further 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 preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual may cause gastrointestinal dis-

turbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy may cause uterine infection and blood poisoning.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, has had and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' medicinal preparations containing injurious drugs.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 4, 1941, issued and thereafter served its amended complaint in this proceeding upon the respondents, Hartig Drug Co., a corporation, also trading as H. K. Pharmaceutical Laboratories, and A. J. Hartig, as president of the Hartig Drug Co., individually and trading as H. K. Pharmaceutical Laboratories, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 24, 1941, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said amended 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 amended 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 Hartig Drug Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, trading as H. K. Pharmaceutical Laboratories, with its office and principal place of business located at 756 Main Street,

Dubuque, Iowa. Respondent A. J. Hartig and family are the principal officers and stockholders of said corporation and respondent A. J. Hartig as its president controls and directs the policies and activities of said corporate respondent.

Respondent A. J. Hartig is an individual trading and doing business as H. K. Pharmaceutical Laboratories with his office and principal place of business occupying the same premises as that of the Hartig Drug Co. located at 756 Main Street, Dubuque, Iowa.

PAR. 2. The respondents are now, and for more than 2 years last past have been, engaged in the sale and distribution of various medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia. Among the preparations so sold and distributed by the respondents are certain medicinal preparations purportedly for the relief of delayed menstruation which consist of five treatments designated as "Menstruaid Nos. 1, 2, 3, 4, and 5."

Respondents cause said preparations when sold to be transported from their place of business in the State of Iowa to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said 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 their business, as aforesaid, the respondents have disseminated and have caused the dissemination of false advertisements concerning their said preparations by United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and have disseminated and have caused the dissemination of false advertisements concerning their said preparations by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as herein set forth by United States mails and by circulars and other printed or written matter are the following:

I Wonder If I'll BE DELAYED This Month?

Happy Days are Here for MARRIED WOMEN

At last science offers married women relief when nature fails. "Menstruaid" will speedily relieve and normalize the most stubborn overdue and discouraging

delayed female condition. The action is reported to be quick, painless, harmless and convenient . . Easy to use . . speedy, positive results without interference with your work.

CROSS OUT YOUR WORRY DAYS

Every woman has a right to live and enjoy her life. Now banish worry and marked calendar days forever. "Menstruaid" is a scientific remedy, consisting of 5 different treatments—

No. 1. A liquid taken 4 times a day.
No. 2. Tablets taken each night.
No. 3. A powder used in hot bath each night.
No. 4. A powder taken in hot water each night.
No. 5. A suppository to be used each night.
All in one kit, with simple directions.

COMPLETE GUARANTEE

of the manufacturers—H. K. Pharmaceutical Laboratories, Dubuque, Iowa, in each package.

Naturally a scientific compound that will do the work effectively is worth its cost—Price of "Menstruaid" complete treatment $10.00.

"Menstruaid" is registered in United States Patent Office, No. 315,537—Get the genuine from your Druggist today.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, respondents have represented that their medicinal preparations, known as "Menstruaid Nos. 1, 2, 3, 4, and 5" constitute a competent and effective remedy for delayed menstruation; that said preparations are harmless, and will positively bring about a return of normal menstruation and normalize the most stubborn cases of menstrual troubles speedily, conveniently and painlessly; and that said preparations constitute a scientific remedy which is fully guaranteed.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents as hereinbefore set forth are grossly exaggerated, false and misleading. In truth and in fact, respondents' preparations do not constitute a competent or effective treatment for delayed menstruation. Said preparations do not constitute a scientific remedy for delayed menstruation and are not fully guaranteed. All that the respondents will do in connection with such guarantee is to furnish an additional supply designated as "Super Strength" at a reduced price of $5 upon the failure of the purchaser to obtain the desired results. This form of compliance with the so-called guarantee is not made known to the purchaser until after the purchase is completed and the package opened. Respondents' preparations will not

normalize the most stubborn cases of menstrual trouble speedily, conveniently or painlessly. Moreover, said preparations are not safe or harmless as they contain the drugs ergot, aloes and cotton root bark in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said preparations may result in gastrointestinal disturbances, catharsis, nausea and vomiting with pelvic congestion, congestion of the uterus leading to excessive uterine hemorrhage, and in those cases where said preparations are 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.

The use of said preparations may also produce a severe circulatory condition by the congestion of the blood vessels and 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 or irreparable injury to health.

PAR. 6. The advertisements disseminated by the respondents constitute false advertisements for the further 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 preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual may cause gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy may cause uterine infection and blood poisoning.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, has had and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' medicinal preparations containing injurious drugs.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said amended 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, Hartig Drug Co., a corporation, also trading as H. K. Pharmaceutical Laboratories, or trading under any other name, and its officers, and A. J. Hartig, as president of the Hartig Drug Co., individually and trading as H. K. Pharmaceutical Laboratories, or trading under any other name, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their medicinal preparations known as "Menstruaid Nos. 1, 2, 3, 4, and 5," or any product of substantially similar composition or possessing 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 by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference:

(*a*) That said preparations constitute a competent or effective treatment for delayed, unnatural or suppressed menstruation; that said preparations are scientific, safe or harmless; that said preparations are guaranteed; or which advertisement fails to reveal that the use of said preparations may cause gastrointestinal 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 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 cause gastrointestinal 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 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

ALBERT LANE, TRADING AS CONSUMERS BUREAU OF STANDARDS

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

Docket 3718. Complaint, Feb. 18, 1939—Decision, Apr. 28, 1941

Where an individual engaged in interstate sale and distribution of publications purporting to list and grade consumers' merchandise and services sold and distributed throughout the United States, including, at different periods, his "Consumers' Preference" with Chicago address, his "Consumers' Bureau Reports" with New York address—of each of which only one number issued—and finally, his "Consumers Bureau Guide"; selling his said publications through personal interviews or correspondence principally to manufacturers or distributors whose products were listed favorably, to induce them to finance the printing or distribution of a great number of said publications, or to purchase a large number of copies thereof for their own use, and to pay from $50 to $150 for each favorable listing of their respective products, he representing that he would use the money thus received to distribute free copies; and in substantial competition with organizations similarly engaged which did not make use of such acts and practices as employed by him, as below set forth—

(*a*) Represented and implied, through use of trade name "Consumers Bureau of Standards," that he was engaged in making comparative tests of various products for the benefit of consumers, when in fact there was no such organization as "Consumers Bureau of Standards" or "Consumers Bureau" which trade names were used merely to further sale of his publications;

(*b*) Represented, as aforesaid, and in statements in his publications that so-called "Bureau" was a "national non-profit consumers' research and educational organization which investigates, tests and reports on goods and services for the benefit of the ultimate consumer," and "to aid consumers in making wise and economical purchases";

(*c*) Represented that a manufacturer or distributor had only to prove his products best by tests under supervision of so-called "Bureau," to secure free listing, and that in the event of a final difference of opinion between the manufacturer and Bureau on technical matters on such a test, the Bureau would "be glad to have the question at issue submitted to the Mellon Institute of Industrial Research or the Massachusetts Institute of Technology for decision;"

(*d*) Represented that the Bureau had a staff which collected and tested samples of merchandise as a basis for their reports, and that he, personally had a high professional standing and had been in the research business for years;

(*e*) Represented that laboratory tests would be made to select the merchandise which gave the consumers the most for their money, and that the Bureau was a going concern with an established organization, representing a large

consumers' research movement, carrying out scientifically the research work undertaken; and

(*f*) Represented that his said publication would be issued quarterly, and that free distribution of one or two million copies thereof was contemplated;

Facts being he remained in no location for any considerable length of time; maintained no organization, laboratory equipment or staff; had neither employees nor assistants, except for occasional employment of not more than two stenographers at any one time, and the assistance of his wife, but conducted the entire enterprise personally; was not a graduate of any college, university, or technical school, had no particular knowledge of laboratory testing and was not an expert on the testing of any of the products listed in his publications or upon the subjects concerning which he wrote; did not test in any real sense the articles and goods listed, excepting canned fruits, vegetables and salmon, which he submitted to Government organization for such purpose; selections made by him as outstanding values or "best buys" were haphazard and arbitrary; he had no arrangements for testing with either the Mellon or Massachusetts Institutes, and no connection with the National Bureau of Standards or any Government bureau or organization; and each of his said publications was issued, not quarterly, but only once; and

(*g*) Intimated to manufacturers or distributors whose products had been favorably listed in his publications and whom he solicited as aforesaid, that if his demands were not met he would write disparagingly of them or their products, with tendency and capacity to intimidate and coerce them and cause them to finance distribution of his publications or purchase a substantial number thereof;

With effect of misleading and deceiving a substantial portion of the purchasing public and manufacturers and distributors into the erroneous belief that all of his aforesaid representations were true, with result, because of such mistaken belief and of his threatening and coercive acts and practices, that a substantial number of the consuming public and manufacturers and distributors whose products were listed in his said publications purchased the same, and interstate trade and commerce was unfairly diverted to him from his competitors:

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

Before *Mr. Edward E. Reardon* and *Mr. Webster Ballinger*, trial examiners.

Mr. Fletcher G. Cohn for the Commission.

Mr. Irwin Panken, of New York City, for respondent, and also *Mr. Albert Lane*, *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 Albert Lane, 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, Albert Lane, is an individual doing business under the name and style of "Consumers Bureau of Standards," with his principal place of business located at 319 West 48th Street, New York, N. Y.

Respondent, under the aforementioned name of Consumers Bureau of Standards, is now, and has been for more than two years last past, engaged in the business of selling and distributing in commerce, as hereinafter set out, a publication purporting to list and grade certain consumers' goods sold and distributed throughout the United States. At the present time said publication is known as "Consumers Bureau Reports." During 1937, when respondent's place of business was located at 37 West Van Buren Street, Chicago, Ill., said publication was known as "Consumers' Preference."

PAR. 2. Respondent, in the course and conduct of his business as aforesaid, causes and has caused said publications, "Consumers' Preference" and "Consumers Bureau Reports," when same are, or were, sold, or when respondent is, or was, seeking to sell them, to be transported from the States of Illinois and New York, respectively, to purchasers or prospective purchasers thereof located in States of the United States other than the States of Illinois and New York. Respondent has maintained, and is still maintaining, so far as the publication, "Consumers Bureau Reports," is concerned, a course of trade in said publications in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of his business, respondent is, and has been, in substantial competition with other persons, and with corporations and firms, engaged in the sale and distribution between and among the various States of the United States, and in the District of Columbia, of publications which actually contain unbiased scientific opinions based on proper tests as to the comparative merits of the products listed therein.

PAR. 4. In the course and conduct of his business, as aforesaid, respondent has made, and is still making, for the purpose of inducing, and which were, and are, likely to induce, directly and indirectly, the purchase of his aforesaid publications in said commerce, certain statements and representations, by means of advertisements contained in

said publications and in circulars, and through sales talks and letters to prospective purchasers thereof.

Among, and typical of, said statements and representations are the following:

Consumers Bureau of Standards.

Consumers' Bureau of Standards is a national, non-profit consumers' research and educational organization, which investigates, tests, and reports on goods and services for the benefit of the ultimate consumer.

Towards this end Consumers' Bureau of Standards hopes to serve as a national clearing-house in securing and publishing outstanding values in a wide variety of consumer products, based on comparative tests or examinations as to quality and price.

With well over a million branded products on the market, our first selection was, of necessity, confined to a small percentage. The extensive distribution of Consumers' Preference should, however, overcome this difficulty inasmuch as a manufacturer or distributor of competitive products has only to prove his products best by tests, under our supervision, to secure our free listing. In the event of a fixed difference of opinion between the manufacturer and ourselves on technical matters on such a test, we will be glad to have the question at issue, submitted to the Mellon Institute of Industrial Research or the Massachusetts Institute of Technology for decision.

The following samples of canned fruit were graded for us by official graders of the United States Bureau of Agricultural Economics.

Consumers Bureau Reports are published four times a year in 32-page magazine form and they contain the results of Consumers Bureau of Standards' search for the outstanding values in a wide variety of consumers' products and services.

By the means and in the manner aforesaid, and through other statements of similar import and meaning to those herein set out, respondent represents and implies that the Consumers Bureau of Standards is affiliated or connected with the National Bureau of Standards of the Department of Commerce of the United States; that said Consumers Bureau of Standards is a national nonprofit organization which makes comparative tests of various articles and products used by the consuming public, and which advises the public, through the publications aforementioned, as to the best values on the market; and that over a million copies of said publications, which are to be published four times a year, will be distributed to the public free of charge; that respondent maintains a staff of technicians to make scientific comparative tests or examinations of the various articles and products listed in said publications; that the respondent has had tests made for him by the United States Bureau of Agricultural Economics; that in case of dispute between the respondent and manufacturers whose products and articles are being tested, the question at issue will be submitted to the Mellon Institute of Industrial

Research or the Massachusetts Institute of Technology for decision; and that large numbers of said publications have been purchased by manufacturers having products listed therein.

The respondent has also represented that his said publications were magazines designed to present the manufacturer's side of the picture in advertised articles and products in competition with prevailing consumers' analysis magazines like "Consumers' Research" and "Consumers' Union"; that the publications would be sold and distributed nationally; with a million copies distributed free; and that he would make actual tests of the articles and products listed in his said publications.

PAR. 5. The above and foregoing statements and representations as to the nature, extent, and purpose of the business conducted by the respondent are grossly exaggerated, misleading, and untrue. In truth and in fact, the Consumers Bureau of Standards is not in any way affiliated or connected with the National Bureau of Standards of the Department of Commerce of the United States. Said Consumers Bureau of Standards is not a national nonprofit consumers' research and educational organization for securing and publishing outstanding values in a wide variety of consumers' products, based on comparative tests or examinations as to quality and price. Respondent does not investigate, test, examine, or report on articles, products, or services for the benefit of consumers. Respondent has not maintained a staff to conduct comparative tests or examinations of the various articles and products listed in said publications, and he has never made any comparative tests or examinations. Respondent has no means or methods of submitting disputed questions to the Mellon Institute of Industrial Research or the Massachusetts Institute of Technology for decision. No tests have been conducted for the respondent by the United States Bureau of Agricultural Economics or by anyone connected with the Department of Agriculture. The publications of the respondent do not present the manufacturers' side of the picture of advertised products and said publications are not published four times a year, and they are not distributed nationally, and neither one million copies nor any other substantial number of respondent's publications have been distributed free. Neither of said publications is substantially distributed, nor have they been purchased in substantial numbers by manufacturers listing products or articles therein. The true facts are that Consumers Bureau of Standards is a trade name under which the respondent individually engages in business for a profit. The respondent has no means or method, nor has he ever had any means or method, of making investigations,

tests, or examinations to determine the comparative quality or price of articles listed in his said publications; he has no employees, nor does he possess any laboratories or any other equipment to make any test or examination. Respondent, since 1937, has owned and published one edition of "Consumers' Preference" and one of "Consumers Bureau Reports," the former being in the autumn of 1937 and the latter in the summer of 1938. Respondent's purpose in selling and distributing these publications is not to inform, protect, or advise the consuming public, but to induce the manufacturers and producers whose products and articles are listed in the publications to purchase large numbers of said publications in consideration of respondent's so listing their articles and products. With the exception of the free copies sent by the respondent to those whose products were listed in his publications, which copies were sent in an effort to induce the purchases of a large number of other copies, none have been given free to the public.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading representations made in commerce, in the manner aforesaid, was, and is, calculated to, and had, and now has, a tendency to mislead and deceive a substantial portion of the purchasing public and the manufacturers and producers, whose products respondent seeks to list, and has listed, in his publications, into the erroneous belief that all of said representations are true. Further, as a true consequence of the mistaken and erroneous beliefs induced by said representations of respondent, a substantial number of the consuming public and the manufacturers and producers, whose products were and are listed in the publications of respondent, have purchased a substantial number of said publications, with the result that trade has been unfairly diverted to the respondent from his competitors, who do not misrepresent their businesses or the contents of their publications, and substantial injury has been, and is now being, done by respondent to his said competitors in the commerce hereinbefore described.

PAR. 7. In soliciting the purchase of his publications by manufacturers and producers, whose products respondent sought, and seeks, to list in his publications, respondent has threatened that if said manufacturers and producers did not make such purchases, their products would be listed disparagingly in respondent's publications. This practice and method used by respondent, in said commerce, between and among the various States of the United States, has, and has had, the tendency and capacity to, and does, intimidate and coerce the manufacturers and producers, whose products are listed

in respondent's publications, to purchase a substantial number of copies of said publication. As a result thereof, respondent has a competitive advantage over his competitors in said commerce who do not use or employ such practices and methods.

PAR. 8. All the aforesaid acts and practices of respondent, as hereinbefore alleged in Paragraphs Four and Seven, are 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 February 18, 1939, issued its complaint in this proceeding and caused same to be served upon respondent Albert Lane, an individual, 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, testimony and other evidence in support of the allegations of said complaint were introduced by Fletcher G. Cohn, attorney for the Commission, and in opposition to the allegations of the complaint by Irwin Panken, attorney for the respondent, and also by the respondent, pro se, before examiners for the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiners and exceptions thereto, 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 Albert Lane is an individual who, under the trade names of Consumers Bureau of Standards and Consumers Bureau, has been, and is, engaged in the business of selling and distributing in commerce between and among the various States of the

United States and in the District of Columbia certain publications, purporting to list and grade consumers' merchandise, goods, and services sold and distributed throughout the United States.

PAR. 2. While conducting the aforesaid business under the trade name of Consumers Bureau of Standards respondent Albert Lane in 1937 published, sold, and distributed a publication known as "Consumers' Preference," with the address of said publication being given as 37 West Van Buren Street, Chicago, Ill. In 1938 respondent, under the same trade name, published, sold, and distributed a publication known as "Consumers Bureau Reports," with the address of said publication being given as 319 West Forty-eighth Street, New York, N. Y. Respondent personally compiled each of said publications and was the author or compiler of the representations contained therein. One issue of each of said publications was printed, sold, and distributed and thereafter publication, sale, and distribution of each was discontinued.

PAR. 3. Respondent's said publications, "Consumers' Preference" and "Consumers Bureau Reports," were shipped by the respondent from his respective places of business in Chicago, Ill., and New York, N. Y., to the purchasers thereof located in the various States of the United States and in the District of Columbia. Respondent maintained a course of trade and commerce in said publications, "Consumers' Preference" and "Consumers Bureau Reports," between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the latter part of 1939, and subsequent to the institution of this proceeding, respondent, doing business under the trade name of Consumers Bureau, published, distributed, and sold in the aforesaid commerce a publication known as "Consumers Bureau Guide."

PAR. 5. Respondent, in the course and conduct of his business, made many representations in his publications regarding his business and said publications. Among, and typical of, such representations are the following:

Consumers Bureau of Standards is a national non-profit consumers' research and educational organization which investigates, tests, and reports on goods and services for the benefit of the ultimate consumer.

Consumers Bureau of Standards is a national non-profit consumers' research and educational organization which investigates, tests and reports on goods, services and sources of supply to aid consumers in making wise and economical purchases.

It (referring to Consumers Bureau of Standards) aims to aid consumers in making wise and economical purchases.

Toward this end, Consumers Bureau of Standards hopes to serve as a national clearing-house in securing and publishing outstanding values in a wide variety of consumer products based on comparative tests or examinations as to quality and price.

As a start, we have selected 700 products which we believe are outstanding values.

A manufacturer or distributor of competitive products has only to prove his products best by tests, under our supervision, to secure free listing. In the event of a final difference of opinion between the manufacturer and ourselves on technical matters on such a test, we will be glad to have the question at issue submitted to the Mellon Institute of Industrial Research or the Massachusetts Institute of Technology for decision.

Consumers Bureau Reports are published four times a year in thirty-two page magazine form and they contain the results of Consumers Bureau of Standards' search for the outstanding values in a wide variety of products and services on the basis of the unbiased and impartial competitive tests or examinations as to quality and price, hundreds of products are recommended by brand name.

PAR. 6. Respondent, in the course and conduct of his business, also represented, among other things, that his publications "Consumers' Preference" and "Consumers Bureau Reports" would be issued quarterly; that respondent, doing business under the trade name of Consumers Bureau of Standards, had a staff which collected samples of merchandise and goods and tested the same, after which the said staff would compile reports to show the results of said tests; that respondent had a high professional standing and had been in the research business for years; that respondent, doing business under the aforesaid trade names, would make laboratory tests to select the merchandise and goods which gave the consumers the most for their money; that respondent, doing business under the aforesaid trade names, contemplated free distribution of one or two million copies of his publications; that the "Bureau" was a going concern with an established organization; that respondent represented a large consumers' research movement; or that the research work to be done by the "Bureau" would be done scientifically.

PAR. 7. During the years 1937, 1938, and 1939 respondent resided and conducted his business at various locations in New York, N. Y.; Chicago, Ill.; Philadelphia, Pa.; and Long Island City, N. Y. Respondent did not remain in any one location for any considerable length of time. Respondent has never maintained an organization, laboratory equipment, or staff for testing consumer goods. Except for the occasional employment of not more than two stenographers at any one time and the assistance of his wife, the respondent has had neither employees nor assistants and has conducted the entire enterprise by himself as an individual. Respondent is not a gradu-

ate of any college, university, or technical school and has no particular knowledge of laboratory testing, nor is he an expert on the testing of any of the products listed in his publications or upon the subjects concerning which he wrote in these publications. Before respondent began operating under the trade name of Consumers Bureau of Standards he was a real estate salesman who, from time to time, sold subdivisions in various parts of the country.

PAR. 8. The respondent did not test, in any real sense, the articles and goods listed in his publications. When manufacturers of radios furnished samples at the respondent's request, he conducted "tests of selectivity," which consisted of listening to the radios. Respondent made some inquiries of merchants and buyers as to costs and trade-in value of such radios, but conducted no tests of any kind with reference to the mechanical parts or efficiency of same. Respondent also wrote to manufacturers of different kinds of wearing apparel asking them to send him particular sizes of same in order that he might test such apparel. The sizes thus requested by respondent were those of respondent and his wife. The articles of apparel which respondent received in response to such requests were then worn by the respondent and his wife, the respondent claiming that by doing this he was giving these articles an "actual wear test." None of the inquiries conducted by the respondent into the goods listed in his publications were of such a nature as to provide sufficient information or data to determine the consumer value of the articles so examined, either separately or in comparison with competitive articles.

The only products submitted by the respondent for any sort of laboratory test were canned fruits, vegetables, and salmon, which were submitted by respondent to a Government organization for testing. These products were listed in "Consumers' Preference." None of the products listed in respondent's publication "Consumers Bureau Reports" were submitted for any tests or examinations by Government agencies, and none of the products or articles listed in either of said publications was submitted to any non-Government laboratories for tests or examinations.

The representations by respondent that certain articles are outstanding values or "best buys" implies that the selections were made after consideration and tests of all competing articles of substantial importance. Respondent did not so consider and test all articles of competitive importance with those selected by him. On the contrary, his selections were haphazardly and arbitrarily made.

PAR. 9. Respondent never had any arrangements with either the Mellon Institute of Industrial Research or the Massachusetts Institute of Technology to test anything for him and no products were submitted to them by the respondent for testing or grading. Under date of February 11, 1937, or approximately eight months before publication of "Consumers' Preference," respondent made written inquiry of the Mellon Institute of Industrial Research to ascertain whether it would test certain articles for the purpose of determining which among them was "the best buy to the ultimate user or consumer," and under date of February 15, 1937, respondent was advised that the Mellon Institute of Industrial Research was not in a position to make such tests. Respondent's so-called "Consumers Bureau of Standards" was not in any way connected with the National Bureau of Standards of the Department of Commerce of the United States or with any Bureau, Division, or Department of the United States Government.

PAR. 10. The trade name "Consumers Bureau of Standards" imports and implies that respondent is an organization engaged in making comparative tests of various articles and products for the benefit of consumers. There was, and is, no such organization as Consumers Bureau of Standards or Consumers Bureau. As hereinabove stated, these are merely trade names under which respondent conducted his said business. The subscribers to respondent's publications, who paid a dollar per year for same and whom respondent classified as "members" of his said "Consumers Bureau of Standards," were not members of any such organization and never held any meetings. The "Bureau" never had any permanent address and was not a going concern, but was merely a project of the respondent to further the sale of his publications.

PAR. 11. Subscriptions to "Consumers' Preference" and "Consumers Bureau Reports" were solicited through subscription coupons which appeared on the last page of both publications and also in pamphlets distributed by respondent. Said coupons were as follows:

Subscription Coupon

$1.00 for one year Issued quarterly

CONSUMERS BUREAU OF STANDARDS

347 West 55 Street New York, N. Y.

I enclose $_____. Please send

Consumers Bureau Reports for one year to:

NAME_____

ADDRESS_____

Please accompany subscription with check, dollar bill or money order.

A similar subscription coupon appeared in respondent's publication known as "Consumers' Preference" and likewise in various pamphlets which respondent distributed advertising said publications. None of the said subscribers ever received four copies per year of respondent's "Consumers' Preference" or "Consumers Bureau Reports" as the subscription coupons represented that they would.

PAR. 12. The principal sales of respondent's publications were to manufacturers or distributors. One of respondent's methods of selling his publications to such manufacturers and distributors was to interview personally or write to those whose products were listed favorably in his publications to induce or seek to induce them to finance the printing or distribution of a great number of said publications or to purchase a large number of copies thereof for their own use, and many letters soliciting such sales or financial aid were written by respondent to such manufacturers and distributors.

PAR. 13. Another method employed by respondent to sell and distribute his publications was by means of letters or personal visits to attempt to induce each manufacturer or distributor whose products were listed favorably in his publications to pay amounts varying from $50 to $150 for each favorable listing of their products. Respondent represented that he would use the money thus received to distribute free copies of his publications. The following is from a letter written by respondent to certain hosiery manufacturers:

We are going to make a serious attempt to select, through laboratory tests, the Best Buys, within given price ranges, of the branded hosiery on the market.

We believe most manufacturers of genuine quality products will welcome such a comparative test, fairly conducted. All are invited to participate in this test, to be made under our supervision, on the basis of a laboratory charge of $22 for each number they wish tested plus the cost of the samples. This method has not only solved what might otherwise prove an almost prohibitive cost if we had to test everything on the market but has proved a most effective means of centering our tests to the best.

The laboratory selected and the factors governing the tests will be those most apt to create a ready consumer acceptance of the soundness of our findings.

Those numbers which rate as the BEST BUYS will be listed in a Consumers Buying Guide which we are preparing for annual distribution. It will list, by brand name and number, a wide variety of commodities in common use and recommend as Best Buys those which, under similar tests, grade accordingly.

The Guide will be offered nationally to retailers and the ultimate consumers for practically the cost of compiling, printing and mailing or twenty five cents. This

should secure an extensive Nation-wide circulation but, to further assure this, we contemplate the free distribution of about one million Guides, the expense of which is to be allotted to the participants on a basis of 150 for each listing.

PAR. 14. In soliciting the sale to or financing of his publications by manufacturers and distributors whose products had been favorably listed therein, the respondent intimated and inferred that if his demands were not met he would write disparagingly or in a derogatory manner of them or their products. This method used by respondent has had, and now has, the tendency and capacity to intimidate and coerce the manufacturers and producers whose products are listed in respondent's publications, and to cause them to finance the distribution of his publications or to purchase a substantial number of same.

PAR. 15. In the course and conduct of his business respondent is, and has been, in substantial competition with organizations engaged in the publication, sale, and distribution in commerce between and among the various States of the United States and in the District of Columbia of publications purporting to list and grade consumers' merchandise, goods, and services sold and distributed throughout the United States. Said organizations have not engaged in the acts and practices used by respondent, and the aforesaid acts and practices of the respondent have been, and are, injurious to the business in commerce of said competitors.

PAR. 16. The grossly exaggerated, false, and deceptive representations by respondent as hereinabove set forth have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public, and manufacturers and distributors whose products respondent sought to or did list in his publications, into the erroneous belief that all said representations are true. As a result of the mistaken and erroneous belief induced by such grossly exaggerated, false, and deceptive representations, and of the threatening and coercive acts and practices of respondent with respect to manufacturers and distributors, a substantial number of the consuming public and the manufacturers and distributors whose products were listed in the publications of respondent have purchased said publications, and trade and commerce among and between States of the United States and of the District of Columbia has been unfairly diverted to respondent from his competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before examiners of the Commission theretofore duly designated by it, report of the trial examiners and exceptions 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 respondent Albert Lane, trading or doing business as Consumers Bureau of Standards or Consumers Bureau, or under any other name, his representative, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any book, magazine, periodical, circular letter, or any other printed or written matter which gives or purports to give appraisals or classifications of merchandise, goods, or services, do forthwith cease and desist, directly or by implication, from:

1. Representing in any manner, or using any trade or other name which imports or implies, that such publication is compiled, issued, sold, or offered for sale by or under the direction of any bureau, institute, or organization engaged in research work for the benefit of consumers, or devoted to aiding consumers in making wise or economical purchases, or which by means of any scientific or adequate tests of any nature designates the comparative consumer value of any merchandise, goods, or services.

2. Representing that any such publication is or will be issued, printed, or distributed at any stated time or times other than those at which it is actually issued, printed, or distributed.

3. Representing that respondent's business is operated on a nonprofit basis.

4. Representing that respondent's business is national in scope, or representing in any manner that such business is greater in size or scope than is the fact.

5. Representing that respondent is, or represents, any consumers' research group or movement.

6. Representing that respondent has any arrangement with the Mellon Institute of Industrial Research, Massachusetts Institute of Technology, or any similar organizations or institutions, for the sub-

mission thereto for determination of any questions concerning the value or comparative value of merchandise, goods, or services.

7. Representing that respondent personally is qualified by any special training, education, or experience to determine or has any employees, staff equipment, or facilities for determining, by any scientific method or adequate investigation or tests, the value or comparative value of any merchandise, goods, or services.

8. Threatening, inferring, or implying to any manufacturer or distributor of merchandise, goods, or services that a refusal to buy copies of or contribute financially to such publication or directly or indirectly to respondent, will or may result in unfavorable, disparaging, or derogatory listing of, or reference to, such manufacturer or distributor or his merchandise, goods, or services in or in connection with said publication.

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

IN THE MATTER OF

ETHEL BELLAMY, INC.

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

Docket 4424. Complaint, Dec. 19, 1940—Decision, Apr. 28, 1941

Where a corporation engaged in interstate sale and distribution of its cosmetic and drug preparation designated as "Ethel Bellamy Eyelash Luxuriant"; by means of advertisements in newspapers and periodicals and in circulars, leaflets, pamphlets, and other advertising literature—

Represented, directly and by implication, that its said product was of substantial therapeutic value in the treatment of granulated eyelids, and that use thereof promoted growth of eyelashes, supplied pigment thereto, and darkened them permanently;

Facts being that it possessed no therapeutic value in the treatment of granulated eyelids, was wholly incapable of affecting the growth of eyelashes and, while its properties as a dye might darken eyelashes temporarily, it had no permanent effect upon color thereof and did not supply any pigment thereto;

With effect of misleading and deceiving a substantial number of the purchasing public into the erroneous and mistaken belief that such representations were true and of inducing thereby its purchase of substantial quantities of such 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. Randolph Preston*, trial examiner.
Mr. Donovan Divet for the Commission.
Mock & Blum, 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 Ethel Bellamy, 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 Ethel Bellamy, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its general offices and principal place of business located at 30 Elm Street, Nutley, N. J.

PAR. 2. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of a cosmetic and drug preparation known and designated as "Ethel Bellamy Eyelash Luxuriant." Respondent causes its said preparation, when sold, to be transported from its aforesaid place of business in the State of New Jersey 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 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, 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; 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 periodicals and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

1. Some years ago, I burned my lashes—they never grew—since I have started to use this amazing lash grower, they have grown about ¼ inch only using it three months. I recommend it very highly and can speak truthfully of the experience.

2. It has helped my lashes as they would never grow before, no matter what I used.

3. At the end of the second month, lashes had grown darker. On the lower lid, new ones had grown in.

4. My daughter has been using the eyelash luxuriant over a month and a lengthening and thickening of her eyelashes is quite apparent. She also was affected with granulated eyelids and your preparation has been of real benefit in helping remedy this condition.

PAR. 4. Through the use of the aforesaid statements and representations, and others of similar import and meaning not specifically set out herein, respondent has represented directly and by implication that respondent's said preparation Ethel Bellamy Eyelash Luxuriant is of substantial therapeutic value in the treatment of granulated eye-

lids; that its use promotes the growth of eyelashes; that it supplies pigment to the eyelashes and darkens eyelashes permanently.

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 said preparation, Ethel Bellamy Eyelash Luxuriant, possesses no therapeutic value in the treatment of granulated eyelids. Said preparation is wholly incapable of promoting or affecting the growth of eyelashes. While said preparation, by reason of its properties as a dye, may serve to darken eyelashes temporarily, it is incapable of any permanent effect upon the color of the eyelashes. It does not supply any pigment to the eyelashes.

PAR. 6. The use by the respondent of the foregoing false and deceptive statements and representations with respect to its 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 to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's preparation.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 19, 1940, issued, and on December 20, 1940, served its complaint in this proceeding upon respondent, Ethel Bellamy, 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, 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, hav-

ing duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Ethel Bellamy, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its general offices and principal place of business located at 503 Franklin Avenue, Nutley, N. J.

PAR. 2. Respondent is now and has been for more than one year last past engaged in the sale and distribution of a cosmetic and drug preparation known and designated as "Ethel Bellamy Eyelash Luxuriant." Respondent causes its said preparation, when sold, to be transported from its aforesaid place of business in the State of New Jersey 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 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, 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; 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 periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

1. Some years ago, I burned my lashes—they never grew—since I have started to use this amazing lash grower, they have grown about ¼ inch only using it three months. I recommend it very highly and can speak truthfully of the experience.

2. It has helped my lashes as they would never grow before, no matter what I used.

3. At the end of the second month, lashes had grown darker. On the lower lid, new ones had grown in.

4. My daughter has been using the eyelash luxuriant over a month and a lengthening and thickening of her eyelashes is quite apparent. She also was affected with granulated eyelids and your preparation has been of real benefit in helping remedy this condition.

PAR. 4. Through the use of the aforesaid statements and representations, and others of similar import and meaning not specifically set out herein, respondent has represented directly and by implication that respondent's said preparation Ethel Bellamy Eyelash Luxuriant is of substantial therapeutic value in the treatment of granulated eyelids; that its use promotes the growth of eyelashes; that it supplies pigment to the eyelashes and darkens eyelashes permanently.

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 said preparation, Ethel Bellamy Eyelash Luxuriant, possesses no therapeutic value in the treatment of granulated eyelids. Said preparation is wholly incapable of promoting or affecting the growth of eyelashes. While said preparation, by reason of its properties as a dye, may serve to darken eyelashes temporarily, it is incapable of any permanent effect upon the color of the eyelashes. It does not supply any pigment to the eyelashes.

PAR. 6. The use by the respondent of the foregoing false and deceptive statements and representations with respect to its 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 to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's preparation.

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, Ethel Bellamy, 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 preparation designated "Ethel Bellamy Eyelash Luxuriant," or any preparation of substantially similar composition 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 advertisement represents, directly or through inference, that said preparation possesses any therapeutic value in the treatment of granulated eyelids; that it promotes the growth of eyelashes; that it supplies pigment to the eyelashes; that said preparation darkens eyelashes permanently, or has any effect upon the color of the eyelashes in excess of such temporary effect as it may have by reason of its properties as a dye.

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.

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

IN THE MATTER OF

AMERICAN PLIERENCH CORPORATION

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

Docket 3853. Complaint, Nov. 22, 1939[1]*—Decision, Apr. 30, 1941*

Where a corporation engaged in the manufacture of a patent combination plier and wrench designated by it as "The Eifel-Geared PlieRench Kit," and in competitive interstate sale and distribution thereof; in advertisements of its said kits in periodicals, booklets, pamphlets, letters, and other printed matter—

Represented that earnings to be made in the resale of said products by purchasers ranged from $35 to $125 a week and that purchasers who devoted their entire time to such sale made as much as from $1,500 to $4,000 a year; facts being that earnings by purchasers of said kits did not under any circumstances approach such amounts;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that said representations were true and of inducing a substantial number thereof to purchase kits in question and thus unfairly divert trade to it from competitors who do not misrepresent earnings resulting from resale 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. Edward E. Reardon*, trial examiner.

Mr. Wilbur N. Baughman and *Mr. James I. Rooney* for the Commission.

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 American Plierench 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Plierench 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

[1] Amended.

and place of business at 4611 Ravenswood Avenue, Chicago, Ill. It is now, and for more than 1 year last past has been, engaged in the manufacture of a combination plier and wrench kit, designated "The Eifel-Geared PlieRench Kit," and in the sale and distribution of said kits in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes said kits, when sold, to be transported from its place of business in Chicago, Ill., to the purchasers thereof, some located in the State of Illinois, and others located in various other States of the United States and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by respondent in said kits in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with persons, firms, and partnerships in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of similar articles or of other articles used for the same and similar purposes. There are among such competitors those who do not misrepresent the earning capacity of their salesmen or representatives or the terms and conditions upon which their respective products may be obtained.

PAR. 2. Respondent, in the course and conduct of its business in commerce, as herein described, distributes said kits through agents, representatives, or salesmen to whom said kits are distributed by the respondent for resale to the ultimate users thereof. To induce the purchase of said kits, respondent advertises said kits by means of booklets, pamphlets, letters, and other printed matter distributed among prospective representatives, and by means of advertisements placed in magazines and other periodicals circulated generally in the various States of the United States and in the District of Columbia. All of said advertisements contain many statements and representations with respect to the earnings made by representatives selling said kits and with respect to certain so-called "free" goods delivered to such representatives in connection with the sale and distribution of said kits. Among, and typical of, the statements and representations so made by the respondent are the following:

Be a PlieRench Man, They're making $35 to $85 Weekly!

It Takes 7 SQ. FT. OF SPACE and 101 Pictures to show the astounding Working Power, Speed, and Efficiency, and the AMAZING MONEY-MAKING Power * * *

$35 to $100 Weekly * * * of this Greatest Hand Tool Invention of ALL Time.

Be a PlieRench Man, They're making $35 to $125 Weekly.

Free kit offers.

The EIFEL-GEARED PlieRench KIT is A GUARANTEED SUPER-QUALITY Gripping Machine that Out-Works, Out-Speeds and Out-Wears ALL other Tools.

I predict that within Six Months the top Plierench Profits of Best former years * * * $205 in one day, and $379 in one week * * * will be beaten, because Plierench Men's Profits have been growing fast, with one of them making $308 in one week lately * * *.

OFFER No. 1¼ (6 KITS in all) includes One Kit * * * ENTIRELY FREE * * * Yes siree, $308 in ONE WEEK!

* * * This same Plierench Man made $685 on the KITS he got from us in that one month! HOW CAN IT BE DONE? O, there's "Magic" in it all right * * * the MAGIC of a Pair of Plierench KITS in ACTION * * * in the Hands of a Man who knows how to make the "Magic" Demonstration shown in the SALES MANUAL which you get with your First Selling Order. It takes but 6 Minutes, but Prospects SEEING * * * HOW * * * and * * * BUY * * * IN BUNCHES!

Realize that there are HUNDREDS OF MILLIONS of Pliers and Wrenches in USE in the United States alone, and TENS OF MILLIONS are bought yearly * * * Now, since the Plierench KIT is the SUPER-PLIER-WRENCH VISE, in the Bulk and Weight, and at the Cost of ONE Good Tool—it cannot help but Replace and Supersede these Millions of Inferior tools as fast as it can be produced * * * as it is Actually doing.

Tell me * * * In What OTHER BUSINESS can you start yourself with $5 to $10 that offers any such possibilities? And, our new best men started in that small way, and, those DEMONSTRATING OUTFITS which they got FREE have been worth their weight in GOLD to many of them * * * some making as much as $20,000 to $40,000 Profit each, over a period of years! !

DO YOU KNOW What the average STORE DEALER makes on his Investment of from $15,000 to $30,000 * * * not to mention his lifetime of experience? Actual Records show that he is lucky to make from $1,200 to $2,500 per Year in Salary and Dividends Combined: Now, It's a Poor Plierench Man who can't make as much and more on an investment that runs between $25 and $100!

Get FREE—"7 Edge end-&-angle screwdriver."

Full-time men making $1,500 to $4,000 yearly * * * part-timers in proportion.

Through use of the aforesaid representations and others of similar import and effect, not herein set out in full, respondent represents that representatives engaged in the sale and distribution of said PlieRench kits earn profits of from $35 per week up to $125 per week and even up to as much as $300 or more per week, and that representatives devoting full time to the sale of respondent's PlieRench kits earn profits of from $1,500 to $4,000 a year, and that respondent gives to such representatives or to anyone upon request one of the aforesaid PlieRench kits and a 7-edge end-&-angle screwdriver free without cost or without condition.

PAR. 3. The representations so made and used by the respondent, as aforesaid, as to the earnings of representatives are grossly exaggerated, false, and misleading. In truth and in fact representatives engaged in the sale and distribution of respondent's PlieRench kits do not earn profits of from $35 to $125 per week and do not earn profits of as much as $300 a week or more. Fulltime representative do not earn profits of from $1,500 to $4,000 per year or any sums approaching such amounts. The various sums set out in the advertisements appearing in paragraph 2 hereof, which sums are represented by the respondent as representing the earnings that may be reasonably expected to be earned by respondent's representatives under normal conditions and circumstances, are in fact greatly in excess of the sums actually earned by such representatives in the ordinary and regular course of business. Respondent's representatives whether devoting full time or only part time in the sale of respondent's PlieRench kits do not under any circumstances or conditions earn sums reasonably approaching the sums representing the earnings set out in the aforesaid advertisements. Respondent does not furnish representatives or anyone else upon request with free kits, or "7-Edge end-&-angle screwdrivers" "Free," without cost or condition. In fact respondent requires the purchase of a designated number of said kits, before furnishing the so-called free items, which fact is not disclosed to the prospective representatives until after inquiry has been made and respondent has established contact with such persons. The so-called free PlieRench kits can be obtained only upon the purchase of a number of other PlieRench kits and the offer of such so-called PlieRench kits is nothing more than the offer of a quantity discount.

PAR. 4. The use by the respondent of the aforesaid acts and practices in connection with the offering for sale, sale, and distribution of said kits in commerce among and between the various States of the United States and in the District of Columbia 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 said representations are true, and that representatives can earn the sums indicated in said advertising matter in selling said kits, and that a wrench kit and a "7-Edge end-&-angle screwdriver" will be furnished such representatives or anyone else upon request entirely free and without cost or condition, and causes a substantial number of members of the purchasing public, because of said erroneous and mistaken belief, to purchase respondent's said kits, thereby unfairly diverting trade in said commerce to the respondent from its aforesaid competitors who do not misrepresent the earnings of their repre-

sentatives or the terms and conditions under which goods may be obtained. In consequence thereof injury has been done, and is being done, to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition 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 22, 1939, issued and thereafter served its amended complaint on the respondent American Plierench Corporation, charging it 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 amended complaint and the filing of respondent's answer thereto, testimony, and other evidence in support of the allegations of said amended complaint were introduced by John M. Russell, attorney for the Commission, and in opposition to the allegations of the amended complaint by Joseph Eifel, President of the respondent corporation, before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said amended complaint, the answer thereto, testimony and other evidence, and upon brief in support of the complaint (the respondent not having filed brief or requested oral argument), and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, American Plierench Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its place of business at No. 4611 N. Ravenswood Avenue, Chicago, Ill. Said respondent corporation is

now, and since its incorporation in 1933 has been, engaged in the manufacture and in the sale of a patent tool which is a combination plier and wrench and which is designated as "The Eifel-Geared Plie-Rench Kit," in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes said kits when sold to be transported from its place of business in Chicago, Ill., to the purchasers thereof some of whom are located in the State of Illinois and others located in various other States of the United States and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade by respondent in said kits in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business respondent is now and for more than 1 year last past has been in substantial competition with other corporations in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of similar articles used for the same and similar purposes. There are among such competitors those who do not misrepresent the earnings resulting from the resale of said products by the purchasers thereof.

PAR. 2. Respondent, American Plierench Corporation, in the course and conduct of its business as herein described, to induce the purchase of said kits advertises the same by means of booklets, pamphlets, letters, and other printed matter distributed among prospective purchasers and by means of advertisements inserted in magazines and other periodicals circulated generally throughout various States of the United States and in the District of Columbia. Said advertisements, in addition to statements concerning the merits of respondent's product, contain many statements and representations with respect to the earnings made in the resale of said kits by the purchasers thereof. Among and typical of the statements and representations so made by the respondent concerning the earnings made in the resale of said kits by the purchasers thereof, are the following:

Be a PlieRench Man, They're making $35 to $85 Weekly.

* * * * * * *

* * * AMAZING MONEY-MAKING POWER * * * $35 to $100 Weekly. * * *

I predict that within Six Months the top Plierench Profits of Best Former Years * * * $205 in one day, and $379 in one week * * * will be beaten, because Plierench Man's Profits have been growing fast, with one of them making $308 in one week lately * * *

Yes siree, $308 in ONE WEEK!!

Full-time men making $1,500 to $4,000 yearly * * * part-timers in proportion.

* * * this same Plierench Man made $685 on the KITS he got from us in that one month!

* * * some making as much as $20,000 to $40,000 Profit each, over a period of years!!

Through the use of the aforesaid representations and others of similar import, the respondent represents that the earnings resulting from the sale of said kits by the purchasers thereof range from $35 per week up to $125 per week and that such purchasers who devote their entire time to the sale of said kits make as much as from $1,500 to $4,000 a year.

PAR. 3. The representations made by the respondent as to the earnings resulting from the resale of said kits by the purchasers thereof are grossly exaggerated, false and misleading. The evidence shows conclusively that the earnings resulting from the resale of said kits by those who purchased the same, relying upon the statements made by the respondent as to the earnings that would result from the resale thereof, do not under any circumstances or conditions approach the earnings as represented by the respondent.

PAR. 4. The use by the respondent of the aforesaid statements and representations has the tendency and the capacity 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 cause a substantial number of the members of the purchasing public because of said erroneous and mistaken belief to purchase respondent's kits, and trade is thereby diverted unfairly in said commerce to the respondent from its aforesaid competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief 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, American Plierench 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 a combination plier and wrench, designated as The Eifel-Geared PlieRench Kit, 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. Representing any specified sum of money as possible earnings or profits of salespersons for any stated period which is not a true representation of the earnings or profits which have been made for such stated period of time by a substantial number of respondent's active salespersons in the ordinary course of business under normal conditions and circumstances.

2. Representing any specified sum of money as earnings or profits of any specified salesperson for any stated period of time unless such sum of money has in fact been earned net by such salesperson in said period of time in the ordinary course of business and under normal conditions.

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

JACOB HOLTZ AND ABRAHAM L. HOLTZ, INDIVIDUALLY AND AS COPARTNERS TRADING UNDER THE NAMES OF JACOB HOLTZ AND JAY HOLTZ COMPANY

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

Docket 3979. Complaint, Dec. 22, 1939—Decision, Apr. 30, 1941

Where two individuals engaged in competitive interstate sale and distribution of electric goods, clocks, lamps, household goods, and about 700 items of merchandise to retailers, organizations, and operators of concessions in amusement parks, and in distributing circulars illustrating and explaining plans, methods and devices used by it in the sale of such merchandise, as below set forth—

Sold and supplied to their customers along with assortments of their merchandise, paraphernalia known as Bingo sets through which it was sold and distributed to the consuming public by means of a game of chance, gift enterprise, or lottery scheme, and thereby supplied means of conducting lotteries in the sale of their merchandise, contrary to established public policy of the United States Government and in violation of criminal laws of a number of the States;

With result that business was thereby unfairly diverted from competitors who are unwilling to and do not use any sales method involving game of chance, gift enterprise, or lottery scheme:

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

Before *Mr. John W. Addison* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to provisions of the Federal 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 Holtz and Abraham L. Holtz, individually and as copartners trading under the names of Jacob Holtz and Jay Holtz Co., 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 Jacob Holtz and Abraham L. Holtz are individuals doing business as copartners under the names of Jacob Holtz and Jay Holtz Co. with their principal office and place of business located at 889 Broadway, New York, N. Y. Respondents are now and for some time last past have been engaged in the sale and distribution of toilet sets, pillow cases, blankets, smoking stands, military sets, zipper bags, electric appliances, and various 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 merchandise when sold to be transported from their aforesaid place of business in New York to purchasers thereof at their respective points of location in the various States of the United States other than the State of New York, and in the District of Columbia. There is now and for some time last past has been a course of trade by respondents in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, 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 articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, as described in paragraph 1 hereof, the respondents in selling and distributing their said merchandise have supplied their customers with assortments of said merchandise, together with certain paraphernalia known as Bingo sets, by means of which said Bingo sets said merchandise is sold and distributed to the consuming public in a manner which involves the operation of a game of chance, gift enterprise, or lottery scheme. One of said Bingo sets consists of a master board containing 75 numbers; a number of Bingo cards on each of which cards appear 25 numbers arranged in a square, which numbers correspond to the numbers on the master card; a number of small wooden balls on each of which appears a number; and a number of small cardboard squares called "markers." Each of said Bingo cards has a different group of numbers thereon and one of said cards appears substantially as follows:

BINGO

Nos. 1 to 15	Nos. 16 to 30	Nos. 31 to 45	Nos. 46 to 60	Nos. 61 to 75
12	22	42	54	71
10	29	38	57	64
7	19	FREE 0 FREE	58	69
8	18	44	55	61
6	30	43	46	62
Nos. 1 to 15	Nos. 16 to 30	Nos. 31 to 45	Nos. 46 to 60	Nos. 61 to 75

Oak Leaf Series 3100

START WITH LETTER O IN CENTER, FREE
FIVE NUMBERS ACROSS ANY LINE WINS; HORIZONTALLY
VERTICALLY OR DIAGONALLY
12 DIFFERENT WAYS TO BINGO

61

Made in sets up to 3000 cards Printed in U. S. A.

By means of said Bingo set, said merchandise is distributed to the purchasing public in substantially the following manner: Respondents' customer or someone designated by such customer acts as an operator in the sale or distribution of said merchandise. The operator of the Bingo set places in the hands of each participant one of the said Bingo cards and each participant pays the operator a designated sum of money for the privilege of participating in the distribution of each of said articles of merchandise. The operator then places the said wooden balls in a container and so mixes them that the numbers thereon are concealed until one of said wooden balls is withdrawn from the container by the operator. In the center of the participant's Bingo card is a square marked "FREE" and each participant places a marker thereon before the aforesaid drawing of said numbers is begun. The operator then proceeds with the drawing of numbers from the aforesaid mixing container and calls out the number appearing on each ball as said ball is withdrawn from said container and the person on whose card such number appears places one of said markers over such number. This same procedure is followed until one of the participants has succeeded in marking five

numbers on said card, which numbers form a straight line across the card either horizontally, vertically, or diagonally. The sequence or distribution of the numbers which control the placing of the markers is determined wholly by chance. Upon marking the last of said five numbers the participant calls out the word "Bingo." The marked numbers are called out by the operator who checks the same with the numbers on said master board and if such numbers have been correctly marked the participant is entitled to and receives one of said articles of merchandise as a prize. The other participants receive nothing for their money. This same procedure is repeated until all of said articles of merchandise or prizes have been distributed. The articles of merchandise vary in value but each of said articles of merchandise is of greater value than the amount paid by each participant for participation in the distribution of said merchandise as above described. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondents have sold and distributed various Bingo sets and other devices for use in the sale and distribution of their merchandise to the consuming public by lot or chance but the principle of operation in connection with each of said Bingo sets or devices is similar to the one hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondents have sold and distributed their said assortments of merchandise together with said Bingo sets have used said Bingo sets in selling and distributing respondents' merchandise in accordance with the aforesaid sales plan or method. 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 or method hereinabove described. The use by the respondents of said sales plan or method in the sale and distribution of their merchandise and the sale of the 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 United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondents, as above alleged, are unwilling to adopt and use said sales plan or method, or any sales plan or method involving a game of chance or the sale of a chance to win something by chance, or any other sales plan or method that is contrary to public policy and such

competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and by the element of chance involved therein and have been and are 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 equivalent sales plan or method. The use of said sales plan or method by respondents, because of said game of chance, has the capacity and tendency to and does unfairly divert substantial trade to respondents from their said competitors who do not use the same or equivalent sales plan or method.

PAR. 5. The aforesaid acts and practices of respondents as hereinabove 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 22d day of December, A. D., 1939, issued and thereafter served its complaint in this proceeding upon the respondents Jacob Holtz and Abraham L. Holtz, individually and as copartners trading under the names of Jacob Holtz and Jay Holtz Company, charging them with unfair methods of competition in commerce and unfair and deceptive acts in practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent Abraham L. Holtz's answer thereto (no answer was filed by respondent Jacob Holtz), testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission before duly designated trial examiners of the Commission. Said testimony and other evidence were duly recorded and filed in the office of the Commission. (No testimony or other evidence was introduced by the respondents.)

Thereafter the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, the trial examiners' report thereon 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. Respondents Jacob Holtz and Abraham L. Holtz are copartners having their principal place of business in the city and State of New York and conduct their business under the trade names of "Jacob Holtz" and "Jay Holtz Company."

PAR. 2. Respondents for 3 years last past have been and now are engaged in the sale and distribution to retailers, organizations, and to persons operating concessions in amusement parks of electric goods, clocks, lamps, household goods, and about 700 items of merchandise, and causes said products, when sold, to be shipped from their principal place of business to purchasers thereof located in various States of the United States.

PAR. 3. Respondents in the conduct of their said business have been and now are in competition with other partnerships, individuals, and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among various States of the United States.

PAR. 4. Respondents in the course and conduct of their said business have sold and supplied their customers with assortments of said merchandise, together with certain paraphernalia known as Bingo sets by means of which said Bingo sets, said merchandise is sold and distributed to the consuming public in a manner which involves the operation of a game of chance, gift enterprise, or lottery scheme.

One of said Bingo sets consists of a master board containing 75 numbers; a number of Bingo cards, on each of which appears 25 numbers arranged in a square, which numbers correspond to the numbers on the master card; 75 small wooden balls, on each of which appears a number ranging from 1 to 75; a cage which holds the 75 balls; and a number of small card board squares called "markers."

By means of said Bingo set said merchandise is distributed to the purchasing public in substantially the following manner. The operator of the Bingo set places in the hands of each participant one of said Bingo cards and each participant pays the operator a designated sum of money for the privilege of participating in the distribution of each of said articles of merchandise. The operator then places the said wooden balls in the said cage and so mixes them that the numbers thereon are concealed until one of said balls is withdrawn from the container by the operator. In the center of the Bingo card is a square marked "Free," and each participant places a marker thereon before the aforesaid drawing of said numbers is begun. The operator then proceeds to the drawing of numbers from the aforesaid cage, calls out

the number appearing on each ball, and as said ball is withdrawn from said cage the person on whose card such number appears places one of said markers over that number. This same procedure is followed until one of the participants has succeeded in marking five numbers on said card, which numbers form a straight line across the card, either horizontally, vertically, or diagonally. The person who succeeds in so marking his card is entitled to and receives one of said articles of merchandise as a prize. The other participants receive nothing for their money. This same procedure is repeated until all of said articles of merchandise or prizes have been distributed. The said articles of merchandise vary in value, but each of said articles is of greater value than the amount paid by each participant for the right to participate in the distribution of said merchandise. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondents have sold and distributed, and now sell and distribute various Bingo sets for use in the sale and distribution of their merchandise to the consuming public, and each of said sets is similar to the one hereinbefore described, varying only in detail.

PAR. 5. The persons to whom respondents have sold and distributed their said assortments of merchandise, together with said Bingo sets, have used said Bingo sets in selling and distributing respondents merchandise in accordance with the aforesaid sales plan or method. 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 or method hereinbefore described. The use by respondents of said sales plan or method in the sale and distribution of their merchandise and the sale of said sets by and through the use 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 United States and in violation of the criminal laws of a number of the States.

PAR. 6. Respondents in soliciting the sale of its merchandise has distributed and now distributes to customers and prospective customers circulars illustrating and explaining its plans, methods and devices in the sale of its merchandise as set forth in paragraph 4.

PAR. 7. During all the time herein mentioned respondents have been in competition with other partnerships, individuals, and corporations engaged in the sale and distribution in commerce between and among various States of the United States of merchandise similar to that sold by the respondents and who are unwilling to use and do not use in the sale and distribution of their merchandise any method involving a game of chance, gift enterprise, or lottery scheme, and as a result of

respondents' said methods of trade, business has been unfairly diverted from such competitors to the respondents.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondents' competitors and are contrary to the established public policy of the Government of the United States of America and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondent Abraham L. Holtz, testimony and other evidence taken before trial examiners duly designated by the Commission in support of the allegations of said complaint and the report of the trial examiners thereon, and brief filed on behalf of 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 Jacob Holtz and Abraham L. Holtz, individually and as copartners trading under the names of Jacob Holtz & Jay Holtz Co., their representatives, agents, and employees, jointly and severally, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of electric goods, clocks, lamps, household goods, 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 electric goods, clocks, lamps, household goods, or any other merchandise accompanied by a bingo set or any similar device to be used or which may be used by the purchaser of said merchandise or others as a means of disposing of said merchandise by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others bingo sets or similar devices, either with assortments of electric goods, clocks, lamps, household goods, or any other merchandise, or separately, which said bingo sets or similar devices are to be used or may be used in selling or distributing said electric goods, clocks, lamps, household goods, 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 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

FREDMORR, INC., AND MORRIS WEITZ, INDIVIDUALLY, AND TRADING AS MORRCO, AND AS AN OFFICER OF FREDMORR, INC.

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

Docket 3982. Complaint, Dec. 29, 1939—Decision, Apr. 30, 1941

Where a corporation and an individual, who was its secretary and treasurer and directed and controlled its policy, engaged in competitive interstate sale and distribution of pencils, radios, watches, electric shavers, and other articles of merchandise, and in illustrating and explaining their plans, methods, and devices for sale of their merchandise, as below set forth, through advertisements in magazines—

Furnished to purchasers various plans and devices which involved the operation of games of chance, gift enterprises, or lottery schemes for sale and distribution of their merchandise to the ultimate consumer wholly by lot or chance, a typical "deal" including two Packard-Lektro Shavers and five Parker Pencils and a push card for use in sale and distribution of said products by dealer or operator purchasers, under a plan, explained on card, by which persons received one of such shavers or pencils or nothing for their money except right to push disc, and paid varying amounts dependent, as case might be, upon chance selection, from list displayed, of feminine name and concealed accompanying number;

With results that they thereby placed in the hands of others various devices which involved games or schemes of chance for distribution of their said products to the ultimate consumer wholly by lot or chance, and whereby trade was unfairly diverted to themselves from competitors who did not use any such sales method:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors, contrary to established public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

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

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

Mr. Harry R. Wilson, 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 Fredmorr, Inc., a corporation, and Morris Weitz, individually and trading as Morrco

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

PARAGRAPH 1. Respondent Fredmorr, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 110 West Forty-second Street, New York, N. Y. Morris Weitz is also individually trading under the name of Morrco, with the office and place of business of this concern located at 107 West Forty-first Street, New York, N. Y. Morris Weitz is secretary and treasurer of the corporate respondent and formulates, directs, and controls the acts, practices, and policies of the corporate respondent. Respondents are now and for sometime last past have been engaged in the sale and distribution of electric dry shavers, fountain pens, pencils, radios, cameras, clocks, watches, and other articles of 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 transported from their said places of business in the State of New York to purchasers thereof, at their respective points of location, in the various other States of the United States and in the District of Columbia. There is now and has been for sometime last past a course of trade by 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 corporations, partnerships, and individuals engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

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

Respondents distribute and have distributed to agents, operators, and the purchasing public certain literature and instructions, including among other things, push cards, order blanks, illustrations of their

said merchandise and circulars explaining respondents' plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondents' push cards bears 101 feminine names with ruled columns on an attached or accompanying folder for writing in the name of the customer opposite the feminine name selected. Said push card has 101 small partially perforated discs on the face of which is printed the word "push." Each of such discs is set under one of the aforesaid feminine names. Concealed within each disc is a number which is disclosed only when the disc is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a Packard electric dry shaver. Persons selecting certain designated numbers set out in the legend in the center of said card also receive a premium or prize. The push card bears a legend or instructions as follows:

PACKARD Lifetime

LEKTRO-SHAVER

FREE 7-8-11-12-13-15 FREE

5 ADDITIONAL AWARDS 5

Numbers 30–40–50–60–70 Receive

PENCIL Made by PARKER PEN CO.

1¢ to 35¢—No Higher—

Nos. over 35 pay only 35¢

Sales of respondents' 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 or an article of merchandise free, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondents furnish, and have furnished, various other push cards accompanied by 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 other push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. Retail dealers or operators who purchase respondents' said 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 merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 29th day of December, A. D. 1939, issued and thereafter served its complaint in this proceeding upon the respondents, Fredmorr, Inc., a corporation, and Morris Weitz, individually, and trading as Morrco, and as an officer of Fredmorr, Inc., charging them with unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced before trial examiners of the Commission theretofore duly designated by it to serve in this proceeding. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, the trial examiners' report thereon and exceptions thereto, and briefs in support of and in opposition to 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 Fredmoor, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business in the city and State of New York.

Respondent Morris Weitz is an individual with his principal place of business in the city and State of New York. He is secretary and treasurer of respondent corporation and directs and controls its policy. He also trades as Fredmoor, Inc., under the trade name of "Morrco."

PAR. 2. Respondents for some time last past have been and now are engaged in the sale and distribution of pencils, radios, watches, electric shavers, and other articles of merchandise, and cause their said products, when sold, to be shipped from their principal place of business to purchasers thereof located in various States of the United States.

PAR. 3. Respondents in the conduct of their business have been and now are in competition with other corporations, 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. 4. Respondents in the sale and distribution of their merchandise have furnished to purchasers thereof various plans and devices which involve the operation of games of chance, gift enterprises, or lottery schemes, by means of which said merchandise is sold and distributed to the ultimate consumer wholly by lot or chance. Typical of the methods used by respondents is the following:

One of respondents' "deals" consisted of two Packard-Lektro Shavers and five Parker Pencils and a push card. The push card bears a legend or instructions as follows:

PACKARD Lifetime

LEKTRO—SHAVER

Free 7-8-11-12-13-15 Free

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5 Additional Awards 5

Nos. 30-40-50-60-70 Receive

Pencils made by Parker Pen Co.

1¢ to 35¢—No Higher

Nos. over 35 pay only 35¢

The push card has 101 discs, each covering a perforation in the card. Those perforations are also covered on the reverse side by 101 discs. On each of the face discs is printed the word "Push" and a feminine name, and on the under side of these face discs, effectively concealed until the disc is pushed and removed from the card, is a number which indicates the amounts to be paid in cents for the right to push. There also appears a master seal containing the words "Name under seal receives the new." Concealed within the master seal appears one of the feminine names appearing over the word "Push" on the discs which is not disclosed until the seal is pushed. The person selecting the feminine name corresponding to the one under the master seal receives one of the Lektro-Shavers, and the persons pushing the discs upon which appear the numbers 30, 40, 50, 60, 70 receive a pencil made by Parker Pen Co. Those persons

pushing discs containing numbers other than said numbers, or above which appears a feminine name other than the name appearing on the master seal, receive nothing for their money except the right to push one of the discs.

Respondents sold other items of merchanise by means of like or similar plans and devices.

PAR. 5. Dealers or operators who purchased respondents said merchandise directly or indirectly exposed and sold the same to the purchasing public in accordance with the sales plan aforesaid.

PAR. 6. Respondents in soliciting the sale of their merchandise have placed advertisements in magazines illustrating and explaining their plans, methods, and devices for the sale of their merchandise.

PAR. 7. Respondents, by their sales methods hereinbefore described, have placed in the hands of others various devices which involve games of chance, gift enterprises, or lottery schemes to be used in the distribution of their merchandise, and by the use of said devices said merchandise is distributed to the ultimate consumer wholly by lot or chance.

PAR. 8. During all the time herein mentioned respondents have been in competition with other corporations, partnerships and individuals engaged in the sale and distribution in commerce between and among various states of the United States of merchandise similar to that sold by the respondents and who are unwilling to use and do not use in the sale and distribution of their merchandise any method involving a game of chance, gift enterprise, or lottery scheme, and as a result of respondents' said methods, trade has been unfairly diverted from such competitors to the respondent.

CONCLUSION

The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and of respondents' competitors, are contrary to the established public policy of the Government of the United States, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and other evidence in support of the complaint taken before trial examiners of the Commission theretofore duly

designated by it, the report of the trial examiners upon the facts and the exceptions thereto, briefs filed on behalf of the Commission and the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Fredmorr, Inc., its officers, directors, representatives, agents, and employees, and the respondent Morris Weitz, individually, and trading as Morrco, and as an officer of Fredmorr, Inc., his representatives, agents, and employees, directly or indirectly, or through any corporate or other device, in connection with the offering for sale, sale, and distribution of pencils, radios, watches, electric shavers, 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 pencils, radios, watches, electric shavers, or any other merchandise, so packed or assembled that sales of any 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 push or pull cards, punch-boards or other lottery devices either with assortments of pencils, radios, watches, electric shavers, or other merchandise, or separately, which said push or pull cards, punch-boards, or other lottery devices are to be used or may be used in selling or distributing any of such 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 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 MEDICINAL PRODUCTS, INC., AND ERNEST G. RURUP, AN INDIVIDUAL TRADING AS SCIENTIFIC LABORATORIES OF AMERICA AND AS CALIFORNIA SUNSHINE PRODUCTS, INC., AND AS OFFICER OF AMERICAN MEDICINAL PRODUCTS, INC.

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

Docket 4159. Complaint, June 8, 1940—Decision, Apr. 30, 1941

Where a corporation and an individual who was its president and directing manager, and a second concern, likewise controlled by said individual prior to its suspension by operation of law; engaged in interstate sale and distribution of their "Re-Duce-Oids" medicinal preparation for obesity, use of which in accordance with directions would result in the ingestion of 1½ grains of desiccated thyroid daily; by means of advertisements disseminated through the mails, newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, including purported testimonial quotations—

(*a*) Represented directly and indirectly that their said Re-Duce-Oids constituted a cure or remedy and safe, competent, and effective treatment for obesity; facts being that it did not constitute such a cure or remedy or safe, effective treatment, due to the potentialities of thyroid extract for injury to health; only a small percentage of cases of obesity is due to lack of sufficient thyroid secretion, far more being due to excess food intake, and treatment aimed at stimulation of the glands and increasing the metabolism rate abnormally is not proper in all cases; it is impossible for the layman to determine whether he is suffering from hypothyroidism, or the dosage of thyroid extract which his particular condition might require; said preparation might seriously aggravate tuberculosis, diabetes, or goiter, while the continued taking thereof over a long period by a normal individual could result in impairment of health and cardiac damage; and

(*b*) Failed sufficiently to apprise the purchaser through certain cautioning advertisements and statements on label and circulars accompanying package, of the danger involved in use of said preparation; that it should only be taken under competent medical supervision; that unsupervised use thereof by persons not skilled in the diagnosis and treatment of thyroid conditions might result in serious and irreparable injury to health; that it was definitely harmful if used by those having diabetes, goiter, tuberculosis, arteriosclerosis, or coronary disease; or that use thereof over a long period of time might cause injurious effects or possible irreparable injury to health, even in case of a normal individual;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and inducing it, by reason thereof, 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.

Before *Mr. John P. Bramhall*, trial examiner.

Mr. Gerard A. Rault for the Commission.

Mr. Carl B. Sturzenacker, of Los Angeles, Calif., and *Hall & Cotton*, of Oklahoma City, Okla., 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 Medicinal Products, Inc., a corporation, and Ernest G. Rurup, an individual trading as Scientific Laboratories of America and as California Sunshine Products, Inc., and as officer of American Medicinal Products, Inc., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent American Medicinal Products, Inc., is a corporation organized, existing, and doing business under the laws of the State of California, with its principal office and place of business located at 6630 Santa Monica Boulevard, Los Angeles, Calif.

The respondent Ernest G. Rurup is an individual trading as Scientific Laboratories of America and as California Sunshine Products, Inc., and is also president of the American Medicinal Products, Inc., and has his office and place of business located at 6630 Santa Monica Boulevard, Los Angeles, Calif.

The respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a certain medicinal preparation known as Re-Duce-Oids, which is recommended by the respondents as a cure or remedy for, and a competent treatment of, obesity. In the course and conduct of their business, the respondents cause said medicinal preparation, when sold, to be transported from their 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. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

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 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 respondents have also disseminated, and are now disseminating, and have caused, and are now causing the dissemination of, false advertisements concerning their 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 periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

Reducible FAT GOES!

* * * * * * *

Since individuals vary, as do the causes of overweight, we do not claim that everyone using RE-DUCE-OIDS will receive the same splendid results. RE-DUCE-OIDS are intended for the reduction of reducible fat, to be used only by adults who are otherwise healthy and normal, and whose fat is caused by a disturbance of some of the glands of internal secretion, known as hypothryoidism and accompanying subnormal metabolic rate, one of the common causes. In other words, when these glands do not aid the system in using a sufficient amount of calories, energy is not made available for the system to maintain proper functioning. Therefore, weight usually increases. RE-DUCE-OIDS are intended to aid these glands. RE-DUCE-OIDS must be used according to the easily understood full directions given on the label and pamphlet accompanying each package, which may be seen at your druggist's. No other claims are made, and as you can readily understand, we do not diagnose or prescribe.

XTRA

Read all about the NEW PROFIT DEAL ON RE-DUCE-OIDS

Backed by NEW NATION-WIDE ADVERTISING!

* * * * * * *

RE-DUCE-OIDS, the Safe Old favorite * * * bought by customers from Maine to California for 24 years * * *

PAR. 3. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondents' product, respondents have represented, and do now

represent, directly and indirectly, that their preparation re-duce-oids is a cure or remedy for obesity and constitutes a safe, competent and effective treatment therefor.

PAR. 4. The drug preparation Re-Duce-Oids sold and distributed by the respondents by means of the aforesaid advertising is composed principally of the following ingredients:

Desiccated thyroid,
Whole pituitary substance,
Ovarian substance,
Potassium iodide, and
Phenolphthalein.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondents, as hereinabove described, are grossly exaggerated, misleading, and untrue. In truth and in fact, respondents' preparation Re-Duce-Oids is not a cure or remedy for obesity and does not constitute a safe, competent, or effective treatment therefor. Preparations containing thyroid have been used for the treatment of obesity due to endocrine disfunction, but when so used, the patient must be constantly under specialized medical supervision so that the treatment may be regulated in accordance with the result of physical examination, laboratory findings, and subjective study, in order to avoid serious injury to the health.

PAR. 6. In addition to the false and misleading statements hereinabove set forth, respondents are also engaged in the dissemination of false advertisements as aforesaid in that the respondents fail to reveal to purchasers and prospective purchasers that the use of said medicinal preparation Re-Duce-Oids 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 in that said preparation contains a dangerous drug, desiccated thyroid, the continued ingestion of which accelerates the rate of metabolism, thereby burning the body tissues, especially that of fat tissue, in excess of that which is normal. Thyroid is a dangerous drug, the use of which may produce headaches, muscular and auricular pains, nausea, vomiting, vertigo, insomnia, physical exhaustion, tremor, tachycardia, permanent injury to tissues, organic function and the entire body mechanism, irreparable injury to the heart muscles, with auricular fibrillations and premature death. Furthermore, by reason of the existence of potassium iodide in said preparation, its use would be definitely harmful to those persons suffering from goiter or pulmonary tuberculosis in either the active or quiescent state.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations and advertisements disseminated as aforesaid with respect to said medicinal preparation has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase medicinal preparations containing drugs.

PAR. 8. The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 8, A. D., 1940, issued and subsequently served its complaint in this proceeding upon the respondents, American Medicinal Products, Inc., a corporation, and Ernest G. Rurup, an individual trading as Scientific Laboratories of America and as California Sunshine Products, Inc., and as officer of American Medicinal Products, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The respondents filed an answer to said complaint and subsequently thereto obtained leave to withdraw said answer and file an amended answer to said complaint. After the issuance of said complaint and the filing of respondents' amended answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Gerard A. Rault, attorney for the Commission, and in opposition to the allegations of the complaint by Carl B. Sturzenacker, attorney for the respondents, before John P. Bramhall, 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, the report of the trial examiner upon the evidence, and briefs in support of the complaint and in opposition thereto (oral argument not having been requested), and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent American Medicinal Products, Inc., is a corporation organized, existing, and doing business under the laws of the State of California, with its principal office and place of business located at 6630 Santa Monica Boulevard, Los Angeles, Calif.

The respondent Ernest G. Rurup is an individual and is president and directing manager of American Medicinal Products, Inc., and is actively in control of, and formulates and directs the policies of the American Medicinal Products, Inc.

The Scientific Laboratories of America was a corporation organized under and by virtue of the laws of the State of California and has been suspended by operation of law. During its authorized legal existence its policies were formulated and directed by the respondent Ernest G. Rurup.

PAR. 2. The Commission finds that the respondents American Medicinal Products, Inc., and Ernest G. Rurup, an individual, for more than 1 year last past have been engaged in the sale and distribution of a certain medicinal preparation known as Re-Duce-Oids, which is recommended by the respondents as a cure or remedy for and a competent treatment of obesity. Prior to its suspension, the Scientific Laboratories of America was also engaged in the sale and distribution of said product.

In the course and conduct of the business of the respondent American Medicinal Products, Inc., and, during its existence, the Scientific Laboratories of America, the respondents sold and transported said medicinal preparation Re-Duce-Oids from their places 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 at all times mentioned herein have maintained, a course of trade in said medicinal preparation in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. The Commission further finds that in the course and conduct of their aforesaid business the respondents have disseminated and have caused 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 were likely to induce, directly or directly, the purchase of said medicinal preparation; and respondents have also disseminated and have caused the dissemination of advertisements concerning their said medicinal

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, 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:

Lose reducible fat

Ohio nurse lost 45 pounds. Tells how. Look—feel like a new person. Would you like to get rid of reducible fat quickly? You are possibly one of those many overweight people who are embarrassed and made uncomfortable with unsightly fat. Mrs. Gladysse Hyer, registered nurse of Dayton, Ohio, writes:

"I had been overweight for 13 years * * * was getting heavier. Then I tried Re-Duce-Oids and lost 47 lbs. Results were most satisfactory."

We believe that you will agree that Re-Duce-Oids are worthy of a trial. Surely no woman would want to be burdened with reducible fat by choice. Don't let this ugly reducible fat rob you of your success and happiness! Re-Duce-Oids have been on the market for over 20 years and millions have been sold. Testimonials tell of their results.

Reducible fat goes. She lost 55 lbs. this easy way. "I look 10 years younger."

Don't just sit back and envy slender women! If many fat people only knew it their type of fat often may be reduced. It is possible that you are one of these people. If so, try the modern Re-Duce-Oids Way like Mrs. L. R. Schulze of Jackson, Michigan.

PAR. 4. The Commission finds that through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondents' product, respondents represent, directly and indirectly, that their preparation Re-Duce-Oids is a cure or remedy for obesity and constitutes a safe, competent, and effective treatment therefor.

PAR. 5. The Commission further finds that each capsule of respondents' preparation Re-Duce-Oids contains the following ingredients: Desiccated thyroid, ½ grain; whole pituitary substance, $\frac{3}{10}$ grain; ovarian substance, 1 grain; potassium iodide, 1 grain; phenolphthalein, $\frac{1}{40}$ grain; sugar of milk, q. s. The use of respondents' preparation in accordance with directions would result in the ingestion of 1½ grains of desiccated thyroid per day.

The Commission further finds that respondents' preparation Re-Duce-Oids is not a cure or remedy for obesity. Even in those cases where the use of thyroid extract might be of value in reducing weight,

such reduction would be only temporary, as the ingestion of thyroid extract, by persons requiring such drug, supplies thyroid without increasing the secretory powers of the thyroid gland. After a reduction of weight to what may be considered normal, if the use of thyroid is discontinued a recurrence of the condition of obesity and other symptoms of thyroid deficiency would result. Due to the necessity of competent medical supervision in the use of thyroid extract, its potentialities for injury to health, and the small percentage of obese cases due to lack of sufficient thyroid secretion, it is misleading to represent that the use of respondents' preparation is a safe, competent, or effective treatment for obesity.

Thyroid extract is a very potent medicine and very effective where it is indicated, provided its administration is carefully supervised, as it is also potentially dangerous. The action of this drug, through continued ingestion, is to accelerate the rate of metabolism, thereby causing the breaking down of tissues. In this action the effects of this drug are not confined to fat tissue, but also affect muscular and other tissues of the body, and its continued use over a period of time can cause an incalculable amount of damage, even to a normal individual.

The use of desiccated thyroid has therapeutic value where the condition known as hypothyroidism exists and which condition is caused when the thyroid gland is not secreting as much of the active principle of thyroid into the blood stream as is needed by the individual. The amount of thyroid prescribed to remedy such condition depends upon the needs of the patient, and the quantity must be carefully controlled and changed from time to time. The blood pressure, the heart rate, the general condition, and the loss of weight compared to caloric intake must be checked frequently for each patient and the dosage adjusted according to the requirements.

Thyroid extract is prescribed for hypothyroid individuals who may or may not be obese. In fact, by far the greater percentage of obese individuals are not suffering from hypothyroidism. Obesity, or overweight, is not necessarily due to endocrine disfunction, but is more often due to excess ingestion of food. Any treatment aimed primarily to stimulate the various glands within the body and to abnormally increase the metabolism rate is not the proper form of treatment in all cases. Such treatment should be limited to those obese cases where the condition is due to a lack of normal thyroid secretion, with limitation to the needs of the particular individual.

In the treatment of a hypothyroid condition the dosage of thyroid extract is in part determined by a basal metabolism test, which consists of measuring the amount of oxygen consumed by an individual

per square meter of body surface, as compared with normal consumption, usually allowing 10 percent either above or below normal. If the consumption of oxygen is below normal, it indicates, in some cases, the condition of hypothyroidism and the need of thyroid extract adjusted to the specific needs of the individual. Excess dosage of thyroid may cause a change in such basal metabolism to above normal, causing such person to become extremely nervous, with increase of heart rate and other symptoms of toxic effect.

The use of thyroid extract by a normal person might produce a disorder known as hyperthyroidism, and by producing this disorder would cause the patient to lose weight. It is possible for a person to recover from this disorder if the use of thyroid is discontinued, but if such person happens to be suffering from some other condition, serious results might occur. The use of thyroid extract causes a definite strain on the organs of the body, and should the user be suffering from heart disease or some other disease the excess strain due to the ingestion of thyroid might be of serious danger to health.

Even a normal person suffering from no disease who might take thyroid extract in the dosage prescribed by the respondents in their preparation Re-Duce-Oids could suffer an impairment of health and could get cardiac damage without any particular symptom which the patient would readily recognize. The Commission further finds that the ingestion of desiccated thyroid by a normal individual in the amounts prescribed by respondents over a long period of time would cause such individual to become nervous and irritable, sustain an increased heart rate, and perhaps induce the condition known as hyperthyroidism, resulting in symptoms such as nervousness, easy fatigability, rapid pulse, and good appetite but loss of weight. There may be present in an individual many conditions which are adversely affected by the use of thyroid, such as the presence of diabetes (which is often associated with obesity), arteriosclerosis, coronary disease, tuberculosis, and goiter.

A person suffering from tuberculosis, latent or active, diabetes, or goiter who might take respondents' preparation according to directions might seriously aggravate this condition, with danger to health or life, dependent upon the extent or severity of such condition. In the case of diabetes, it would tend to make this condition worse, increase blood sugar, and cause loss of weight more rapidly.

It is impossible for a layman, by means of self-diagnosis, to determine whether or not he is suffering from the condition of hypothyroidism or to determine the extent or dosage of thyroid extract

which his particular condition might require. Furthermore, there are many persons suffering from tuberculosis or goiter, in either the latent or active state, diabetes, or cardiac conditions, who would not be able to determine their condition by self-diagnosis or have any knowledge that such condition exists.

The ingredients pitutiary substance and ovarian substance in respondents' preparation are of no value in the amounts contained therein under the conditions of use.

The use of potassium iodide in excess doses or for prolonged periods of time might have a tendency to aggravate tuberculosis. Under certain conditions potassium iodide might have some effect on the thyroid gland. However, if a person is suffering from hypothyroidism it would have no beneficial influence, and the condition of hyperthyroidism, where this drug might have some influence, is not generally associated with obesity or overweight.

PAR. 6. In their advertising the respondents in some cases advise that said preparation is not offered as a cure-all for all ailments and that said preparation is not to be taken by children and not intended and should not be used by persons suffering from active or latent tuberculosis, diabetes, or goiter, but that said advertisement is intended only for fat adult persons, for use according to directions, who are otherwise healthy and normal and whose overweight condition is caused by disturbance of the glands of internal secretion which accompany subnormal metabolic rate.

In other advertisements the respondents make no reference to the above conditions where their preparation should not be used but simply state that said preparation is intended for the reduction of reducible fat, for adults who are otherwise healthy and normal and whose fat is caused by a disturbance of some of the glands of internal secretion known as hyperthyroidism and accompanying subnormal metabolic rate, and that said preparation must be used according to the easily understood, full directions given on the label and pamphlet accompanying such package.

On the label on their package the respondents place the following statement:

CAUTION.—For use by adults only who are otherwise normal and healthy; whose fatness is due to hypothyroidism and accompanying subnormal metabolic rate which is caused chiefly by the deficient action of the thyroid gland and sometimes the deficient action of the pituitary or ovarian glands. Most naturally Re-Duce-Oids capsules are not to be taken by children or those adults suffering from pathological conditions such as tuberculosis, diabetes, hyperthyroidism, dropsy, toxic goiter, rapid pulse, or during pregnancy.

In a circular accompanying the package the respondents place the following statement:

Average directions.—Take 1 capsule daily for 6 days, then 1 capsule 2 times a day for 6 days, then 1 capsule 3 times a day with all following bottles. When you approach your normal weight, discontinue using. After taking 6 bottles of Re-Duce-Oids, discontinue their use for a period of 2 weeks before resuming and use according to directions.

Re-Duce-Oids are for adults only and most naturally are not to be taken by children or those suffering from pathological conditions such as: tuberculosis, diabetes, dropsy, toxic goiter, rapid pulse or hyperthyroidism. Should nervousness, nausea or other distress such as increased pulse rate develop while taking Re-Duce-Oids, decrease the dose until the condition disappears. Half a glass of milk taken with the capsule will often prevent any tendency to nausea. However, should distress still be experienced after decreasing the dose discontinue taking Re-Duce-Oids entirely and this distress condition should disappear.

Sometimes an individual may experience distress in the form of nausea which may be caused by an idiosyncrasy for some of the ingredients. Of course as you probably know, individuals vary greatly and some people are unable to tolerate many of our simplest foods such as strawberries, grapes, cabbage or onions, etc. After a few days many individuals build up a tolerance for the ingredients in Re-Duce-Oids.

Based upon the testimony of witnesses with reference to the extent to which the use of thyroid extract should be supervised in order to avoid any possibility of injury even to normal individuals, and the testimony with reference to the inability of a person to self-diagnose or determine the condition of hypothyroidism, and also the lack of knowledge in many cases by individuals as to the existence of conditions such as tuberculosis, diabetes, and various cardiac disorders, the Commission finds that the statements appearing in respondents' advertising are not sufficient to fully apprize the purchaser or prospective purchaser with reference to the danger involved in the use of such preparation.

Based upon such testimony the Commission further finds that in addition to the false and misleading statements hereinabove set forth, the respondents are also engaged in the dissemination of false advertisements, in that said advertisements so disseminated fail to reveal all facts material in the light of such representations, or material with respect to the consequences which may result from the use of respondents' preparation Re-Duce-Oids under the conditions as are customary or usual, and that said preparation should only be used under competent medical supervision and that the unsupervised use of said preparation by persons not skilled in the diagnosis and treatment of thyroid conditions may result in serious and irreparable injury to health, and that said preparation is definitely harmful if

used by persons having diabetes, goiter, tuberculosis, arteriosclerosis, or coronary diseases, and that the use of said preparation over a long period of time may cause the breaking down of muscular and other tissues, as well as fat tissues, causing irritation of nerve tissue, nervousness, irritability, and increased heart rate, with possible irreparable injury to health even to a normal individual.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid with respect to said medicinal preparation Re-Duce-Oids has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase 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, the amended answer of the respondents, testimony and other evidence taken before John P. Bramhall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and report of the trial examiner upon the evidence, and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondents, American Medicinal Products, Inc., a corporation, and Ernest G. Rurup, an individual and as officer of American Medicinal Products, Inc., have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent American Medicinal Products, Inc., a corporation, its officers, representatives, agents, and employees, and the respondent Ernest G. Rurup, an individual, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or dis-

tribution of their medicinal preparation known as Re-Duce-Oids, or any other preparation of 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 advertisement represents, directly or through inference, that respondents' preparation Re-Duce-Oids is a cure or remedy for obesity or constitutes a safe, competent, or effective treatment therefor, or which advertisement fails to reveal that respondents' preparation should only be used under competent medical supervision and that the unsupervised use of said preparation by persons not skilled in the diagnosis and treatment of thyroid conditions may result in serious and irreparable injury to health, and that said preparation is definitely harmful if used by persons having diabetes, goiter, tuberculosis, arteriosclerosis, or coronary diseases, and that the use of said preparation over a long period of time may cause the breaking down of muscular and other tissues, as well as fat tissues, causing irritation of nerve tissue, nervousness, irritability, and increased heart rate, with possible irreparable injury to health even to a normal individual.

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 respondents' preparation Re-Duce-Oids, which advertisement contains any of the representations prohibited in paragraph 1 hereof or which fails to reveal that respondents' preparation should only be used under competent medical supervision and that the unsupervised use of said preparation by persons not skilled in the diagnosis, analysis, and treatment of thyroid conditions may result in serious and irreparable injury to health, and that said preparation is definitely harmful if used by persons having diabetes, goiter, tuberculosis, arteriosclerosis, or coronary diseases, and that the use of said preparation over a long period of time may cause the breaking down of muscular and other tissues, as well as fat tissues, causing irritation of nerve tissue, nervousness, irritability, and increased heart rate, with possible irreparable injury to health even to a normal individual.

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 this Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

M. J. & H. J. MEYER 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 3086. Complaint, Mar. 24, 1937—Decision, May 7, 1941

Where Lea and Perrins' Worcestershire sauce had long been made in England and imported into the United States in bottles or containers, wrappers, and markings of a highly distinctive character, and, as thus made and imported, and later made in the United States in accordance with the original recipe and sold in the same distinctive container and dress of goods had come to be highly regarded as such product, identified by said distinctive containers, labels thereon, etc., and to be preferred to other sauces of the same general nature, of which it was by far the most expensive; and thereafter a competitor engaged in interstate sale and distribution of a much cheaper "Worcestershire sauce"—

(*a*) Packaged its said sauce in containers which closely resembled those of said Lea & Perrins' Worcestershire sauce, having the same distinctive size and shape, wrappers of same type and color along with typography, border, dividing lines, color scheme, and to some extent identical wording placed in the identical position on the wrapper, and simulated other distinctive features in the printed matter of said prior and well-known product, including the Lea & Perrins facsimile signature; and

(*b*) Represented to prospective purchasers and members of consuming public, through use of trade name "Pride of England Worcestershire Sauce" in describing its said wholly domestic product, that the same was made in England and imported into this country;

With tendency and capacity to induce members of the public to form the mistaken belief that its product was in fact the Worcestershire sauce made and sold by Lea & Perrins, Inc., and that it was made in England, with result of thereby inducing substantial numbers of them to purchase its said product, whereby trade was unfairly diverted to it from said Lea & Perrins and also from other competitors who do not simulate the dress and package of aforesaid concern or falsely represent their products as being of English origin:

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

Before *Mr. W. W. Sheppard* and *Mr. Lewis C. Russell*, trial examiners.

Mr. Alden S. Bradley and *Mr. Karl Stecher* for the Commission.

Mr. Harry Yarm, 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 M. J. & H. J. Meyer Co., Inc., a corporation, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, M. J. & H. J. Meyer Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 145 Hudson Street, New York City, in said State. Respondent is now, and has been for several years last past, engaged at said location, among other things, in the distribution and sale of a table sauce, under the trade brand or label "Pride of England Worcestershire Sauce." This brand or label is attached to each bottle of said sauce and has also printed upon it in conspicuous type "M. J. & H. J. Meyer Co. Distributors." This sauce is for use in seasoning meats, fish, oysters, and other foods, when served at the table. This sauce is put up in 5-ounce bottles, and is sold as low as as 65 cents per dozen at wholesale, and retails for 10 cents a bottle. Said product is distributed by this respondent who sells and ships the same to wholesale grocers, who in turn sell the same to retail grocers, delicatessens, and the like, who in turn sell the same to hotels, restaurants, cafeterias, and other public eating places and to ultimate consumers thereof for family uses.

In the course and conduct of said business, respondent ships, or causes to be shipped or transported, said product, when so sold, from the said city of New York, in the State of New York, to said wholesale grocers, many of whom are located in points in various States other than the State of New York. There is now, and has been during all of the times herein mentioned, a constant current of trade in said product so sold by said respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, respondent is now, and has been during all of the times herein mentioned, engaged in substantial competition with various corporations, firms, and individuals selling, or offering for sale, in commerce between and among the various States of the United States, to wholesale and retail grocers in the several States of the United States, products of domestic and

foreign origin used, and intended to be used, for the same purposes as described in paragraph 1 hereof.

PAR. 3. Worcestershire sauce was originally made in Worcestershire, England. Lea & Perrins, a copartnership of Worcestershire, England, began the manufacture and sale of Worcestershire sauce about one hundred years ago and began its importation into the United States about seventy years ago, and continued to import it in very large quantities until about the year 1898. In 1898 the partnership became incorporated under and by virtue of the laws of the State of New York and began the manufacture of the same in this country. Since then, it has been and now is, engaged in the business of selling and shipping Lea & Perrins' Worcestershire Sauce from New York City in said State of New York to wholesale grocers in every State of the United States. The business of this corporation, in the sale of Worcestershire Sauce in the United States, amounts to more than one million dollars per year. Lea & Perrins' Worcestershire Sauce is prepared according to a secret formula. This product is one of recognized and uniform excellence, and has enjoyed a nation-wide popularity for many years. The wholesale price of Lea & Perrins' Worcestershire Sauce is $2.75 per dozen bottles; it retails at 30 cents per bottle. There is a preference among the consuming public for Lea & Perrins' Worcestershire Sauce, as against the Worcestershire sauce of respondent.

The size and shape of the bottles containing Lea & Perrins' Worcestershire Sauce, and the features of Lea & Perrins' label or wrapper have for many years been, and are now, highly distinctive and constitute principally the means by which this product is identified by the purchasing public.

PAR. 4. Respondent's said sauce is sold under the trade brand or label of "Pride of England Worcestershire Sauce." It is a sauce strikingly similar in color, odor, and general appearance to Lea & Perrins' Worcestershire Sauce.

"Pride of England Worcestershire Sauce" is packed in 5-ounce bottles, which are the same distinctive size and shape as those used by Lea & Perrins in packing its product. Respondent, on its said bottles of "Pride of England Worcestershire Sauce," uses a wrapper of the same type of paper and of the same color as is used by Lea & Perrins, upon which the typography, border, dividing lines, color scheme, and other distinctive features in the printed matter, including a script signature of respondent written in black ink diagonally across the face of the wrapper and the wording on its said wrapper or label

simulate the label or wrapper now used by Lea & Perrins on its said product, and which Lea & Perrins has used for many years.

PAR. 5. The use by the respondent of labels and wrappers simulating the labels and wrappers used by Lea & Perrins on their said "Lea & Perrins' Worcestershire Sauce" and the use by the respondent of bottles of the same size and distinctive shape as those used by Lea & Perrins have had, and now have, the tendency and capacity to induce members of the public to form the mistaken and erroneous belief that the respondent's Worcestershire Sauce is in fact Worcestershire Sauce manufactured and sold by Lea & Perrins. As a result of such erroneous and mistaken belief on the part of the members of the purchasing public induced by the acts and representations of the respondent, as aforesaid, substantial numbers of the purchasing public have purchased respondent's product, thereby unfairly diverting trade to the respondent from its said competitor, Lea & Perrins. As a result thereof, injury is done by respondent to competition in commerce among and between the various States of the United States.

PAR. 6. The said use by the respondent of the trade name "Pride of England" in designating its sauce, and the use of the word "Distributors" on the label thereof, serve as representations to prospective purchasers and members of the consuming public that said sauce is made in England and imported into this country. In truth and in fact, this sauce has been, for several years, and is now, manufactured by B. V. Voss in Brooklyn, N. Y. It is purchased from said Voss by respondent and packed and sold under the original "Pride of England" trade brand and label. It is not an imported product.

PAR. 7. There is a preference among a substantial portion of the purchasing and consuming public for Worcestershire Sauce made in England and there is a firm and fixed belief among such persons that it is superior to domestic products of like character. This preference is well known to those engaged in feeding the public and in selling such products to the public.

PAR. 8. The said use by respondent of the words "Pride of England" in designating its said product and of the word "Distributors" upon the label or wrapper thereof, has had and now has the tendency and capacity to induce members of the public to form the mistaken and erroneous belief that respondent's Worcestershire Sauce is in fact Worcestershire Sauce manufactured in England. As a result of such erroneous and mistaken beliefs induced by the acts and representations of the respondent as aforesaid, substantial numbers of the purchasing public have purchased respondent's product, thereby un-

fairly diverting trade to the respondent from its said competitors who do not similarly misrepresent the character or place of origin of their respective products. As a result thereof, injury is done by respondent to competition in commerce among and between the various States of the United States.

PAR. 9. The above alleged acts and practices of respondents 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 meaning of section 5 of an act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 24, 1937, issued and subsequently served its complaint in this proceeding upon respondent, M. J. & H. J. Meyer 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 Alden S. Bradley, and Karl Stecher, attorneys for the Commission, and in opposition to the allegations of the complaint by Harry Yarm, attorney for the respondent, before W. W. Sheppard 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, briefs in support of the complaint and in opposition thereto, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, M. J. & H. J. Meyer Co., Inc., is a New York corporation with its office and principal place of business located at 145 Hudson Street, New York, N. Y.

PAR. 2. The respondent is now and for many years last past has been engaged in the sale and distribution of a table sauce under the trade brand or label of "Pride of England Worcestershire Sauce." Respondent causes said product, 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. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said product in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its said business, respondent is now and at all times mentioned herein has been engaged in substantial competition with various corporations, firms, and individuals selling in commerce between and among the various States of the United States products intended to be used for the same purposes as the product sold by respondent. A great many of said competitors designate and describe their said products as "Worcestershire sauce."

PAR. 4. The business of the respondent herein was started about 1887. Until 1900, said business was carried on by M. J. Meyer, either individually or in partnership with his brother, H. J. Meyer. The business was incorporated in 1900 in the State of New York under the name of M. J. & H. J. Meyer Co., Inc., and said corporation has been in active operation since that time, maintaining its office and place of business in New York City. M. J. Meyer is the president of the corporation. About 1887 the said M. J. Meyer commenced the distribution and sale of a product which he called "Pride of England Worcestershire Sauce." Such sale and distribution was continued by the corporation after its organization. This sauce has at all times, except for a short period during the First World War, been manufactured in the United States. The size and shape of bottle, the wrapping, printing and text on the wrapper have been in continuous use in substantially the same form since about 1887. The bottle is a straight, long neck variety containing 5 fluid ounces so marked on the wrapper. The wrapper is a buff or straw-colored paper. Enclosed in a double line printed rectangular box about one-half the length of the bottle are the printed words, among others, "The Pride of England Brand Worcestershire Sauce." Near the bottom and enclosed within the box are the printed words "Distributors M. J. & H. J. Meyer Company." At the top of the printed box is printed "Shake the Bottle." All printing is in red including the lines enclosing the box except a facsimile signature "M. J. & H. J. Meyer Company," extending diagonally across the box, which is blue. This facsimile signature was placed on the wrapper about 1887. Re-

spondent's product sells at wholesale at around 70 cents per dozen bottles. The usual retail price is 10 cents per bottle. Between 1930 and 1937 the average sales were approximately $9,000. Sales are made through brokers but shipments are made direct to purchasers.

PAR. 5. Worcestershire sauce was originally made in the County of Worcestershire, England, by Lea & Perrins in 1835. At that time it was designated as "Worcestershire Sauce." It was imported into the United States at an early date, the exact time being unknown. It is certain, however, that importations were made as early as 1849. The first agents in the United States importing and selling the sauce were John Duncan & Sons, with their place of business located in New York, N. Y. It was imported in bottles for sale to the purchasing public until 1877. From 1877 to 1898 it was imported in concentrated form, bottled in the United States and sold and distributed. Since 1898 the sauce has been manufactured in the United States in accordance with the original English recipe and bottled, sold, and distributed throughout the country by Lea & Perrins, Inc. The shape of the bottle, the wrapping of the bottle and printing thereon have at all times and are now substantially the same as were originally used by Lea & Perrins in 1835. The bottle first used contained 6 ounces. This was later changed to a 5-ounce bottle, the exact date of such change being unknown. The 5-ounce bottle has been used for a great many years, however. The bottle is of a straight long-neck variety, the neck being nearly as long as the remainder of the bottle. The wrapper is buff or straw-colored paper. Enclosed in a double line rectangular printed box about half the length of the bottle are the printed words, among others, "Lea & Perrins Sauce—The Original & Genuine Worcestershire Sauce." At the top of the printed box the words "Shake the Bottle" are printed. All printing, including the lines enclosing the box, are in red. On the bottom half of the printed box and extending diagonally is printed in blue the facsimile signature "Lea & Perrins." The exact date of the first use of this facsimile printed signature is not known. Such signature printed on the back of the wrapper enclosing the bottle was in use in 1874 and appears on a bottle exhibited in the United States in 1876. It was printed on the front of the wrapper for the first time about 1898. In 1891, Lea & Perrins filed application for registration of their trade-mark in the United States. This bears the facsimile signature "Lea & Perrins." This trade-mark is not used on the wrapper but is pasted on the bottle itself. Lea & Perrins Worcestershire Sauce is of recognized excellence and has had a nation-wide popularity for many years.

PAR. 6. There is a distinct and well-recognized preference among the consuming public for such sauce as compared with the Worcestershire sauce sold and distributed by the respondent herein or with similar sauce sold and distributed by the many competitors selling Worcestershire sauce. Lea & Perrins Worcestershire Sauce sells at wholesale for $3 per dozen, less trade discount of ten percent and two percent off for cash or a net price of $2.65. Sales are from four to five million bottles annually, amounting to from $1,000,000 to $1,500,000. It retails for approximately 30 cents per bottle and is the highest priced Worcestershire sauce on the market.

The size and shape of the bottles containing Lea & Perrins Worcestershire sauce and the various features of the Lea & Perrins wrapper have for a great many years been, and are now, highly distinctive and constitute principally the means by which the product has been and is identified by the purchasing public.

PAR. 7. In the course and conduct of its business as hereinbefore described, the respondent, in connection with the sale and distribution of its Worcestershire sauce, packages the same in containers which closely resemble in appearance the containers of Lea & Perrins Worcestershire sauce. The same distinctive size and shape of bottle is used; the wrappers are of the same type and color of paper, with typography, border, dividing lines, color scheme and to some extent the identical wording, placed in the identical position on the wrapper. Other distinctive features in the printed matter including the facsimile signature simulate the Lea & Perrins, Inc., package consisting of container, wrapper, and label.

PAR. 8. The use by the respondent of the trade name "Pride of England Worcestershire Sauce" in designating and describing its product serves as a representation to prospective purchasers and members of the consuming public that respondent's sauce is made in England and imported into this country. In truth and in fact, respondent's sauce is not of English origin but is manufactured wholly within the United States.

PAR. 9. The use by the respondent of the trade name "Pride of England" in designating its sauce and the use of containers, wrappers, and labels which simulate the containers, wrappers, and labels and printing thereon used by Lea & Perrins, Inc., on its said Lea & Perrins Worcestershire sauce, has had, and now has, the tendency and capacity to induce members of the public to form the mistaken and erroneous belief that respondent's Worcestershire sauce is in fact the Worcestershire sauce manufactured and sold by Lea & Perrins, Inc., and that said sauce is made in England. As a result of

such erroneous and mistaken belief on the part of the members of the purchasing public, induced by the acts and representations of the respondent, as aforesaid, substantial numbers of the purchasing public have purchased respondent's product, thereby unfairly diverting trade to the respondent from its said competitor, Lea & Perrins, and thereby also diverting trade unfairly from those of its competitors in commerce among and between the various States of the United States who do not simulate the dress and package of the Lea & Perrins product, or falsely represent their products as being of English origin.

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 W. W. Sheppard and Lewis C. Russell, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein by Alden S. Bradley and Karl Stecher, counsel for the Commission, and by Harry Yarm, 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, M. J. & H. J. Meyer 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 Worcestershire sauce, whether sold under that name or under any other name, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of wrappers, containers, or labels which simulate the distinctive wrappers, containers, or labels used by Lea & Perrins, Inc., in marketing its Worcestershire sauce, or in any other manner, that respondent's product is Worcestershire sauce manufactured and distributed by Lea & Perrins, Inc.

2. Using wrappers, containers, or labels which simulate the distinctive wrappers, containers, or labels used by Lea & Perrins, Inc., on its Worcestershire sauce.

3. Using the words "Pride of England" or any other words which designate English origin, in any way, to refer to or describe Worcestershire sauce which is not made in England.

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

IN THE MATTER OF

AMERICAN LECITHIN COMPANY, 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 4173. Complaint, July 5, 1940—Decision, May 7, 1941

Where four domestic and two foreign corporations, and various officers and directors thereof, interested in the production, sale, and distribution of lecithin and lecithin products, in the United States;

Acting on the initiative assumed by the president of one of said domestic corporations, manufacturer of soybean oil and desirous of developing and exploiting uses for the lecithin byproduct resulting from such manufacture, and confronted with a situation in which competitive and diffused control of essential patents and patent rights in this country and abroad imposed obstacles to its proceeding under certain patented foreign processes relative to extracting lecithin from soybean oil—

(*a*) Entered into and carried out an agreement directed to the formation of a new corporation in which were merged their various theretofore competitive and conflicting interests with respect to employment of patents and patent rights in production and sale of lecithin and lecithin products in the United States and possessions and Canada, and under which, in consideration of various agreements, obligations, payments, etc., they

1. Undertook, as respects American interests involved, to refrain from exporting the products concerned;
2. Undertook, as respects German and Danish corporations concerned, to refrain from importing such product;
3. Undertook to assign to said new corporation all their rights and interest in the secrets concerning apparatus, devices, and processes, and letters patent and patent applications for the United States and Canada relating to the manufacture, use, and sale of lecithin and its products, and to acknowledge validity of such patents, and not to contest those thereafter acquired or developed by said new corporation;
4. Made said new corporation exclusive distributor of the lecithin to be produced by aforesaid American manufacturer and by a second domestic corporate manufacturer, with which former shared exclusive domestic manufacturing rights under various patents thereby pooled and controlled; and
5. Made a fourth domestic corporation, theretofore engaged in the sale of products involved under certain patents or patent rights, exclusive agent of said new corporate exclusive distributor;

With result that through said agreement and concert of action they eliminated potential competition between aforesaid domestic manufacturers and foreign concerns for business in lecithin in the United States and Canada and in foreign countries, restrained each other from contesting patents governing the production, processing, or use of lecithin, and monopolized trade and commerce therein and in products thereof in themselves; and

Where said new exclusive distributing corporation, to promote the ends which aforesaid arrangement was designed to reach—

(*b*) Threatened prospective purchasers of lecithin over a period of time with suits for patent infringement should they use lecithin purchased from a competitor to practice its patented invention without obtaining a license from it when, in truth and in fact, it did not intend to follow up such threats by suit in all instances;

(*c*) Attempted to extend its monopoly under its Working patent, relating to chocolate and the method of making same and other patents owned by it, to promote sale of its own unpatented lecithin for use in processes, and in making products, covered by aforesaid patents;

(*d*) Attempted to, and did, mislead purchasers and prospective purchasers of lecithin into the mistaken belief that the United States Government had promulgated rules and regulations governing the labeling of products containing lecithin and lecithin compounds through representing to prospective purchasers by correspondence and through its agent the requirements for labeling prescribed by the United States Department of Agriculture and Food and Drug Administration, as it understood them, on the basis of an official letter and an article; advising them that its purified cocoa butter lecithin would not require declaration of the cocoa butter used as the carrier on the label of the packaged product, whereas soybean oil lecithin would require declaration of soybean oil content; with intent and effect of inducing prospective purchasers to buy its purified cocoa butter lecithin and refrain from purchasing the ordinary soy lecithin from either it or its competitors;

(*e*) Disparaged competitor's products through asserting to prospective purchasers that certain of them contained substances such as aluminum cleate, mineral oil, 140°-melting-point stearine, soybean meal, excess water, and excess fatty acids, to the extent and degree disclosed by chemical analyses, without explanation, in many cases, except when requested, of the significance of such ingredients, thus taking unfair advantage of competitors by unfairly representing and describing their products;

(*f*) With intent of creating the erroneous belief in the minds of purchasers that use of its product "Lexin" was recommended by the Government under the Food, Drug and Cosmetic Act of 1939, published and disseminated a scientific treatise entitled "Viscosity of Chocolate" in which the statement was made that "the use of a refined and purified lecithin in the carrier of pure cocoa butter (Lexin) is recommended under the new Act," facts being that the act in question did not recommend the use of any particular product; and

Where said two domestic manufacturers—

(*g*) Followed the practice of selling exclusively to aforesaid exclusive distributing corporation and refrained from entering into competition with one another in the sale of lecithin produced by them under patented processes owned by it; and

Where said exclusive distributor, excepting recently and with the consent of said foreign corporations, following the outbreak of war abroad—

(*h*) Refrained from exporting lecithin to territories where said German and Danish concerns were engaged in sale thereof, and prevented and restricted importation into the United States of lecithin produced by said concerns in foreign countries under process patent owned by it; and

(*i*) Acquired, subsequent to agreement hereinbefore described, various unexpired United States patents relative to production and use of lecithin, and instituted and prosecuted suits against alleged infringements, both direct and contributory, of its aforesaid Working patent:

Held, That said acts and practices were all to the prejudice of the public, had a dangerous tendency to, and actually did, hinder and prevent competition between and among themselves in sale of lecithin and lecithin products in commerce, placed in themselves power to control and enhance prices, and handicapped competitors engaged in production and sale of lecithin in the United States, in the conduct of their respective businesses; and further tended to and did: (1) vest in them control over sale and distribution of products involved, including terms and conditions thereof in interstate trade and commerce; (2) diminish and eliminate importation of lecithin from abroad, and exportation of lecithin and products thereof from the United States; (3) create false and mistaken beliefs and understandings regarding nature and use of competitor's products, the functions of the Government with regard to the labeling of food products and its rules and regulations concerning the labeling of lecithin and products containing same, and unduly restrained trade and competition in interstate commerce in said products, and constituted unfair methods of competition in commerce.

Mr. Lynn C. Paulson for the Commission.

Strange, Myers, Hinds & Wight, of New York City, for respondents, with the exception of Hansa-Muehle and Aarhus Oliefabrik which were represented by *Shaffer & Pierson*, of New York City.

Complaint

Pursuant to the provisions of the Federal 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 American Lecithin Co., Inc., a corporation, its officers, Joseph Eichberg, president, Armand May, vice president, Whitney D. Eastman, vice president, Clifton M. Kolb, secretary, Richard H. Horsburg, treasurer, its directors, Adrien Joyce, chairman; Ross & Rowe, Inc.; The Glidden Co., a corporation; Archer-Daniels-Midland Co., a corporation, its president, Shreve Archer; Hansa-Muehle, a German corporation; Aarhus Oliefabrik, a Danish corporation; and American Lecithin Corporation, a corporation, all hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as commerce is defined in said act; and it appearing to the Commission that a proceeding by it 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 Lecithin Co., Inc. (hereinafter referred to as American Lecithin Co., Inc.) is an Ohio cor-

poration with a principal office and place of business at the Durkee Building, Elmhurst, Long Island, N. Y.

Said American Lecithin Co., Inc. was organized pursuant to an agreement entered into by and between respondents Hansa-Muehle, Aarhus Oliefabrik, American Lecithin Corporation, Archer-Daniels-Midland Co., The Glidden Co. and Ross & Rowe, Inc. (hereinafter in subsequent paragraphs of this complaint referred to as Hansa-Muehle, Aarhus Oliefabrik, American Lecithin Corporation, Archer-Daniels-Midland Co., The Glidden Co. and Ross & Rowe, Inc., respectively). This said agreement (hereinafter more fully described) was entered into on December 5, 1934.

Prior to and until the time when this said agreement was entered into the American Lecithin Corporation was distributing lecithin in the United States manufactured by Hansa-Muehle in Germany; Ross & Rowe, Inc. was distributing lecithin in the United States produced in Denmark by Aarhus Oliefabrik; Archer-Daniels-Midland Co. and The Glidden Co. were producing lecithin at their respective plants in the United States and were the only producers of lecithin in the United States; each party to the agreement owned or controlled one or more patents regarding the production and use of the product lecithin; and each party was directly or indirectly in competition with each other party and with other individuals, firms, corporations, and partnerships importing into and distributing lecithin in the United States.

Pursuant to the aforesaid agreement: American Lecithin Co., Inc. was organized with a nominal common capital consisting of 1,000 shares without par value, which said shares were allocated to the aforesaid organizers on an agreed basis; each of the organizers assigned to the said American Lecithin Co., Inc., upon its incorporation, all their right, title, and interest in and to their secret knowledge, concerning apparatus, devices and processes, also all their right, title and interest in and to letters patent and patent application for the United States and possessions and the Dominion of Canada, which relate to the manufacture, use, and sale of lecithin and lecithin products which they owned at the time the agreement was entered into, or which they thereafter might develop or acquire; each of the organizers have received benefits in a manner stipulated to and agreed upon, and have participated in the management of the said corporation through representation on its board of directors, which said board consists of six members—two appointed by The Glidden Co., two by Archer-Daniels-Midland Co., one by Hansa-Muehle and Aarhus Oliefabrik, and one by American Lecithin Corporation.

Respondents Joseph Eichberg, Armand May, Whitney D. Eastman, Clifton M. Kolb, Richard H. Horsburg, and Adrien Joyce, individuals, are president, vice president, vice president, secretary, treasurer and chairman of the board of directors, respectively, of American Lecithin Co., Inc., and have their principal offices and place of business at the Durkee Building, Elmhurst, Long Island, N. Y.

Respondent Ross & Rowe, Inc. is a New York corporation with its principal office and place of business at 75 Varick Street, New York, N. Y.

The Glidden Co. is an Ohio corporation with its principal office and place of business at 1396 Union Commerce Building, Cleveland, Ohio.

Archer-Daniels-Midland Co. is a Delaware corporation with a principal office in the Roanoke Building, Minneapolis, Minn.

Respondent Shreve Archer, an individual, is president of Archer-Daniels-Midland Co. and has his principal office and place of business at the offices of the Archer-Daniels-Midland Co. in the Roanoke Building, Minneapolis, Minn.

Hansa-Muehle is a corporation duly organized and existing under the laws of Germany and having a place of business at Hamburg, Germany.

Aarhus Oliefabrik is a corporation duly organized and existing under the laws of Denmark and having a place of business at Aarhus, Denmark.

American Lecithin Corporation is a Delaware corporation, having its principal office and place of business at Atlanta, Ga.

PAR. 2. Lecithin is a chemical product used in the manufacture and making of candy, paints, petroleum products, shortening, margarine, rubber, leather, oils, fats, waxes, biscuits, crackers, and other commodities. It is a natural, organic substance occurring in small amounts in practically all living cells and in considerable quantities in egg yolks and in the seeds of most plants. It is not a patented commodity, but there are several patents outstanding on its utilization and on the methods of combining it with other materials. One of the more common functions which lecithin performs is that of preventing graying in products in the manufacture of which cocoa or chocolate is used. It also advantageously affects fluidity.

PAR. 3. In the course and conduct of their respective businesses respondents produce, buy, sell, ship, and distribute, or cause to be produced, bought, sold, shipped, and distributed, substantial quantities of lecithin in commerce among and between the States of the United States, the Territories thereof, and the District of Columbia, as fol-

lows: American Lecithin Co., Inc., buys quantities of lecithin produced by Archer-Daniels-Midland Co. and The Glidden Co. at their respective places of business, and causes same to be shipped to it at its principal place of business, which it in turn sells and distributes to purchasers located in the several States of the United States or resells in quantities to Ross & Rowe, Inc. Ross & Rowe, Inc., purchases substantial quantities of lecithin from the American Lecithin Co., Inc., for resale and distribution to purchasers located in the several States of the United States and in the District of Columbia. Each of the other respondents named in this complaint and not specifically referred to in this paragraph 3, participate in the operation and management of the said American Lecithin Co., Inc., and in the management of their respective firms, corporations, partnerships, and proprietorships as described in the preceding paragraphs hereof.

Ross & Rowe, Inc., sells and distributes lecithin under the trade name of "Yelkin." American Lecithin Co., Inc., sells and distributes lecithin under the trade name of "Lexin."

In the aforesaid manner each and all of the respondents named herein are and have for more than 4 years last past, and at all times mentioned herein, engaged in commerce in lecithin in, between, and among the several States of the United States, the Territories thereof, and the District of Columbia.

PAR. 4. On or about December 5, 1934, respondents entered into an agreement, understanding, combination, and conspiracy to monopolize trade and commerce in lecithin in, among, and between the several States of the United States, the Territories thereof and the District of Columbia, and to suppress, lessen, restrain, and eliminate competition in the purchase, sale, and distribution of the said product lecithin in said commerce.

Pursuant to this agreement, understanding, combination, and conspiracy, and in furtherance thereof, Hansa-Muehle, American Lecithin Corporation, Aarhus Oliefabrik, Archer-Daniels-Midland Co., The Glidden Co., and Ross & Rowe, Inc., as alleged in paragraph 1 hereof, entered into an agreement on December 5, 1934, providing for the formation of the American Lecithin Company, Inc. In addition, it was provided in this said agreement, amongst other things, that:

(*a*) The American Lecithin Co., Inc., should grant to Archer-Daniels-Midland Co. and The Glidden Co. an exclusive license covering the manufacture of lecithin and lecithin products and that lecithin and lecithin products should be sold exclusively to the said American Lecithin Co., Inc., by the said Archer-Daniels-Midland Co. and The Glidden Co.

(*b*) Ross & Rowe, Inc., should act as selling agent of the said American Lecithin Co., Inc., on condition that Ross & Rowe, Inc., would not handle any lecithin competitive with that sold by the said American Lecithin Co.

(*c*) Hansa-Muehle, Aarhus Oliefabrik, American Lecithin Corporation, Archer-Daniels-Midland Co., The Glidden Co., and Ross & Rowe, Inc., should acknowledge all of the patents assigned to the said American Lecithin Co. as good and valid patents and should agree that they would not directly or indirectly contest the validity of the same or the validity of any patents which might be developed or acquired by the said American Lecithin Co. in the future.

(*d*) All the parties to the agreement should cancel and terminate all agreements or arrangements then existing which would in any way interfere with the carrying out of the principles and plan outlined in the agreement, and Hansa-Muehle and Aarhus Oliefabrik should specifically agree not to sell lecithin, or products made with the same, in the United States and the Dominion of Canada, with the exception of Newfoundland, during the life of the patents covered by the said agreement, and American Lecithin Co., Inc., The Glidden Co., Archer-Daniels-Midland Co., and Ross & Rowe were likewise to agree not to sell such products outside of the United States, its possessions, and Canada.

PAR. 5. Pursuant to the agreement, understanding, combination, conspiracy, and the agreement entered into in pursuance thereof as alleged in paragraph 4 hereof and in furtherance of their purposes and aims as alleged in paragraph 4 hereof, respondents have, during all times since 1935, done and performed many acts and things and engaged in many practices and methods and they are continuing to do and perform many acts and things and engage in many practices and methods as follows:

(*a*) Hansa-Muehle and Aarhus Oliefabrik have refrained from exporting lecithin to the United States, and have attempted to discourage, impede, restrict, and hinder the importation of lecithin into the United States from other producers thereof located in countries of Europe.

(*b*) The American Lecithin Co., Inc., has refrained from exporting lecithin from the United States, and has refrained from purchasing lecithin from any other sources than Archer-Daniels-Midland Co. and The Glidden Co.

(*c*) The American Lecithin Co., Inc., and the parties to the agreement aforesaid have, by means of letters, circulars, pamphlets, and advertisements in trade papers and otherwise, published, dissemi-

nated, and circulated and caused to be disseminated through the United States mails and brought to the attention of purchasers and prospective purchasers of the product lecithin, false and misleading statements and representations concerning lecithin manufactured, sold, and distributed by competitors, concerning "Yelkin" and "Lexin" (brands of lecithin distributed by John E. Rowe, Laura W. Rowe, and Wm. F. Schlesinger and the American Lecithin Co., Inc., respectively) and concerning lecithin generally and patents pertaining to it and its use; and by the aforesaid means and by other like and similar methods have unfairly sought and attempted to disparage competitors' lecithin products and obtain a monopoly for themselves in the sale and distribution of lecithin in commerce in the United States, the territories thereof, and the District of Columbia.

(*d*) Respondents have pooled interests (patents, secrets, patent applications, etc.), shared earnings and allocated profits, granted and accepted reciprocal benefits, established and maintained exclusive dealing contracts, agreed upon a division of sales rights, and have cooperated in the doing and performing of other acts and things for the purpose and with the effect of controlling the production of lecithin in interstate commerce in the United States.

(*e*) Respondents have sought and attempted, and do seek and attempt, by personal contact and communication with purchasers and users, or prospective purchasers and prospective users of lecithin and by other means, to convey the impression and create the belief that lecithin produced and distributed by their competitors is not approved by the Food and Drug Administration of the United States Department of Agriculture, and have threatened to cite said purchasers and prospective purchasers for investigation to the Food and Drug Administration for failure to properly advertise and label their products when, in truth and in fact, the threats and accusations could or cannot be sustained and were and are not warranted by the facts in many instances; and by the aforesaid and similar means have sought and attempted, and do seek and attempt, to discourage sales and purchases of competitors' lecithin.

PAR. 6. Among and typical of the representations made and being made as referred to in paragraph 5 (*c*) and (*e*) hereof is a printed statement circularized by the said American Lecithin Co., Inc., entitled "Viscosity in Chocolate," in which the following claim in respect to "Lexin" is made:

In this connection we might mention that the new Food, Drug and Cosmetic Act of 1938 requires the legend "artificial flavor" when any synthetic flavor is

used in chocolate. By synthetic flavor (or color) the law means any flavor (or color) made by chemical synthesis or other artifice.

The use of a refined and purified lecithin in the carrier of pure cocoa-butter (LEXIN) is recommended under the new Act. If lecithin in a carrier of soya oil is used, both the soya oil as well as the lecithin have to be listed on the label.

By this claim respondents have sought, and seek, to create the belief that "Lexin" has the endorsement of the Food and Drug Administration of the United States Department of Agriculture. In truth and in fact, the said Food and Drug Administration has not endorsed the product "Lexin" and respondents' claim is false and deceptive.

PAR. 7. Said agreement, understanding, combination, and conspiracy, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, have had, and do have, the capacity and tendency and effect (*a*) of unduly and unlawfully restricting and restraining competition in the sale and use of lecithin in commerce between, among, and in the several States of the United States and in the District of Columbia, and with foreign nations and outlying territories of the United States, and of thereby restricting and restraining the use thereof in the manufacture, production, and making of numerous and sundry articles, products, and commodities comprising a substantial body of the aforesaid trade in interstate commerce; (*b*) of preventing the growth and development of new uses and additional outlets for the product lecithin and for products in the manufacture of which the use of lecithin is necessary or helpful; (*c*) of restraining competition among domestic manufacturers of lecithin and between domestic manufacturers of lecithin and distributors of imported lecithin; (*d*) of prejudicing respondents' competitors in the conduct and pursuit of their respective businesses; (*e*) of creating false and erroneous beliefs in the minds of purchasers and users, prospective purchasers, and users of lecithin; (*f*) of substantially enhancing prices for lecithin to the consuming public; (*g*) and of eliminating competition, with the capacity and tendency to create a monopoly in the hands of respondents in the production, sale, and distribution of lecithin in commerce within the United States, the territories thereof, and the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice of the public and 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 5th day of July 1940, issued and served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 17, 1940, respondents American Lecithin Co., Inc., Joseph Eichberg, Armand May, Whitney D. Eastman, Clifton M. Kolb, Richard H. Horsburg, Adrien Joyce, Ross & Rowe, Inc., The Glidden Co., Archer-Daniels-Midland Co., Shreve Archer, and American Lecithin Corporation filed a joint answer in this proceeding by their attorney, Roger Hinds, and on October 31, 1940, filed an amendment to their said answer by their attorney, Roger Hinds. On September 14, 1940, respondents Hansa-Muehle and Aarhus Oliefabrik filed a joint answer in this proceeding by their attorney, Howard O. Pierson. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondents American Lecithin Co., Inc., Joseph Eichberg, Armand May, Whitney D. Eastman, Clifton M. Kolb, Richard H. Horsburg, Adrien Joyce, Ross & Rowe, Inc., The Glidden Co., Archer-Daniels-Midland Co., Shreve Archer, and American Lecithin Corporation, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding, as to the aforesaid respondents, 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 as to them 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, answers, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent American Lecithin Co., Inc. (so named in the complaint), is the American Lecithin Co. ("Inc." not being part

of its corporate name), an Ohio corporation with its principal office and place of business in the Durkee Building, Elmhurst, Long Island, N. Y.

Respondent Joseph Eichberg is president of respondent American Lecithin Co.

Respondent Armand May is vice president of respondent American Lecithin Co.

Respondent Whitney D. Eastman (so named in the complaint) is Whitney H. Eastman, a vice president of respondent American Lecithin Co.

Respondent Clifton M. Kolb is secretary of respondent American Lecithin Co.

Respondent Richard H. Hoosburg (so named in the complaint) is Richard H. Horsburgh, treasurer of respondent American Lecithin Co.

Respondent American Lecithin Co. has a board of directors consisting of six members as follows: Respondent Adrien D. Joyce (so named in the complaint) is Adrian D. Joyce, chairman of the board of directors; Armand May, Whitney H. Eastman, Richard H. Horsburgh, W. H. Morris, and Harold H. Fries are the other five directors.

Respondent Ross and Rowe, Inc., is a New York corporation with its principal office and place of business at 75 Varick Street, New York, N. Y.

Respondent The Glidden Co. is an Ohio corporation with its principal office and place of business at 1396 Union Commerce Building, Cleveland, Ohio.

Respondent Archer-Daniels-Midland Co. is a Delaware corporation with its principal office in the Roanoke Building, Minneapolis, Minn.

Respondent Shreve Archer, an individual, is president of respondent Archer-Daniels-Midland Co.

Respondent Hansa-Muehle is a corporation duly organized and existing under the laws of Germany and having a place of business at Hamburg, Germany.

Respondent Aarhus Oliefabrik is a corporation duly organized and existing under the laws of Denmark and having a place of business at Aarhus, Denmark.

Respondent American Lecithin Corporation was organized as a Delaware corporation having its principal office and place of business at Atlanta, Ga.

For convenience, hereinafter the aforesaid respondents will be referred to by their names without the designation "respondent" and at all times hereinafter when any one of the aforesaid names appears it is the respondent of that name to whom reference is made.

PAR. 2. Lecithin, the chemical compound, is a natural organic substance of complex composition occurring in practically all living cells and in relatively larger proportions in egg yolks and in the seeds of certain plants. The lecithin of commerce, which is the product hereinafter meant when the term "lecithin" is used, is a mixture of soy lecithin and related chemical compounds (totaling about 65 percent to 70 percent) and a fatty carrier (about 30 percent to 35 percent), the most common fatty carriers being soybean oil in soy lecithin, and cocoa butter in cocoa butter lecithin. Commercial lecithin is produced in quantity as a byproduct in connection with at least two known methods of processing soybeans, namely, the expeller method and the extraction method. Both involve separation of the lecithin from mixtures of oils, fats, proteins, moisture, etc. There are a number of unexpired United States patents covering steps of process in recovering lecithin. Those owned by American Lecithin Co. are listed in numbered paragraphs 4 and 7 below. There are numerous United States patents covering inventions wherein lecithin is added to other materials either as a useful step in new procedure, or to produce a new article of manufacture. A number of such patents listed in numbered paragraphs 4 and 7 below and including the Working patent No. 1,781,672 which claims both the addition of lecithin to chocolate and the chocolate product so produced are owned by American Lecithin Co. As so used in chocolate, the most important purposes of the lecithin are to reduce the viscosity of the chocolate (thereby to facilitate coating), to retard greying of the chocolate, and to produce a finished chocolate containing a reduced quantity of coca butter, which is equal in appearance to a finished chocolate containing a greater amount of cocoa butter. Commercial lecithin is also used in the manufacture of candy, paints, petroleum products, shortening, margarine, rubber, leather, oils, fats, waxes, biscuits, crackers, and other commodities.

Lecithin is produced in the United States as a byproduct in the recovery and processing of soybean oil and to a minor degree from corn oil. It is sold in various grades and in different stages of refinement. In 1930 the total annual consumption of lecithin in the United States did not exceed 50,000 pounds, all of which was imported and sold by respondents and their predecessors. In 1939 the total annual consumption of lecithin in the United States was about 1,500,000 pounds, of which American Lecithin Co. sold about 66 percent. Of the remaining 34 percent about half was imported and half was produced in the United States. Imports of lecithin have dropped from 350,000 pounds in 1934 (approximately 340,000 pounds of which were imported and sold by respondents, American Lecithin Corpora-

tion and Ross & Rowe, Inc.) to about 260,000 pounds in 1939, of which latter amount none was imported or sold in the United States by any of the respondents. For a time in 1935 and 1936 American Lecithin Co. imported substantial amounts of lecithin purchased from Aarhus Oliefabrik and Hansa-Muehle incidental to destruction of the Glidden plant.

On July 2, 1940, an act of Congress went into effect entitled "An Act to Limit the Importation of Products Made, Produced, Processed or Mined Under Process Covered by Unexpired Valid United States Patents and for Other Purposes."

In or about the month of September 1939, American Lecithin Co., first with the acquiscence, and thereafter with the express consent, of Aarhus Oliefabrik and Hansa-Muehle, began to export lecithin to Europe, Asia, Africa, Australia, and North and South America and has continued to do so and is now doing so. From 1934 down to the present time the prices of lecithin in the United States have ranged downward.

PAR. 3. The American Lecithin Co. is, and has been for more than 4 years last past, engaged in interstate trade and commerce in lecithin, in that it buys lecithin produced in the plants of Archer-Daniels-Midland Co. and The Glidden Co., located in the State of Illinois, and sells at least a part of the lecithin so purchased to purchasers in that State and the other States of the United States, and ships, or causes to be shipped, the lecithin so purchased and sold to the purchasers thereof in the several States of the United States.

Respondent officers and directors of the American Lecithin Co. participate in the conduct of the affairs of the American Lecithin Co.

Ross & Rowe, Inc., is engaged in interstate commerce in that it sells lecithin for the account of American Lecithin Co. in the several States of the United States as the selling agent of American Lecithin Co.

The Glidden Co. is engaged in interstate commerce in that it manufactures lecithin in the State of Illinois and sells and ships it to the American Lecithin Co. located in the State of New York.

The Archer-Daniels-Midland Co. is engaged in interstate commerce in that it manufactures lecithin in the State of Illinois and sells and ships it to the American Lecithin Co. in the State of New York. Shreve Archer, as president of the Archer-Daniels-Midland Co., participates in the conduct of the affairs of that company.

American Lecithin Corporation has not engaged in interstate commerce since the formation of American Lecithin Co.; but prior to that time the American Lecithin Corporation sold and distributed

lecithin to purchasers thereof located in the several States of the United States and in the District of Columbia.

PAR. 4. Prior to December 5, 1934, the situation with respect to the sale and distribution of lecithin in the United States was substantially as follows:

(*a*) Hansa-Muehle owned United States patents for the production and use of lecithin. It was shipping lecithin to the American Lecithin Corporation, to whom it had granted exclusive selling rights in the United States and had agreed not to grant licenses to manufacture lecithin without the consent of American Lecithin Corporation.

(*b*) The American Lecithin Corporation sold and distributed lecithin under an arrangement with Hansa-Muehle. It owned several United States patents relative to the use of lecithin, including one known as the Working patent, No. 1,781,672 issued November 11, 1930, which concerned the use of lecithin in the manufacture of chocolate and chocolate products.

(*c*) Aarhus Oliefabrik produced lecithin in Europe and exported it to the United States to be sold by its agents Fries Bros., whose subagent was Ross & Rowe, Inc., a corporation, Ross & Rowe, Inc., sold lecithin obtained from Aarhus Oliefabrik in competition with the American Lecithin Corporation and other persons, partnerships, and corporations in the United States. They owned a United States patent No. 1,859,240, issued May 17, 1932, on the use of lecithin in connection with the manufacture of candy. In 1932, Ross & Rowe, Inc., granted to American Lecithin Corporation sales rights under said patent, and American Lecithin Corporation granted to Ross & Rowe, Inc., sales rights under said Working chocolate patent conditioned upon the payment of royalties.

(*d*) Other European producers of lecithin sold and shipped lecithin in the United States through brokerage or commission merchants in competition with Ross & Rowe., Inc., and the American Lecithin Corporation. One American firm selling lecithin of foreign manufacture is the J. C. Ferguson Manufacturing Co. of Providence, R. I., which began selling in 1935.

(*e*) The Archer-Daniels-Midland Co. obtained information relative to a manufacturing process in use in Europe from a competitor of Hansa-Muehle, one Brinkman and Mergell of Hamburg, Germany, and began producing lecithin in Chicago in 1934 in small quantities on an exploratory basis. They made an arrangement with Ross & Rowe, Inc., in June of 1934, covering the sale of lecithin domestically. Archer-Daniels-Midland Co. had developed a process subordinate to processes patented by Hansa-Muehle before the agreement of December

5, 1934, hereinafter described and covering the use of hexane in the separation of the phosphatide from soybean oil. The application was filed December 4, 1934, and United States patent No. 2,024,398 issued December 17, 1935.

(*f*) The Glidden Co. is a large manufacturer of paints, varnishes, lacquers, and food products and is also engaged in the business of producing and refining large quantities of vegetable oils. In December of 1934 The Glidden Co. commenced operations in a plant which it had constructed at Chicago, Ill., for the extraction of soybean oil from soybeans by the solvent method through the use of equipment purchased in Germany. Knowing that the soybean oil contained lecithin and that some of the lecithin would have to be removed from the soybean oil to make such oil conform to the specifications under which the oil was to be sold, it occurred to The Glidden Co. that new and substantial commercial uses might be found for lecithin and thereby increase the value of soybean products produced in the United States to the benefit of growers and processors of soybeans. In early 1934, The Glidden Co. consulted Brinkman and Mergell, a German concern, thoroughly experienced in the extraction of soybean oil from soybeans by the solvent method and in the recovery of lecithin from soybean oil, and secured detailed information as to the recovery of lecithin from soybean oil. Brinkman and Mergell advised The Glidden Co. that the processes relative to extracting lecithin from soybean oil used in Germany could be used in the United States without interference from Hansa-Muehle because patent litigation in Germany covering German patents had turned out favorable to Brinkman and Mergell. Brinkman and Mergell overlooked the fact, however, that German court decisions did not apply to United States patents owned by Hansa-Muehle covering the recovery of lecithin from soybean oil, and The Glidden Co. found upon investigating said United States patents and all other United States patents relative to lecithin that it could not extract lecithin from soybean oil on a commercial and practical basis without infringing United States patents owned by Hansa-Muehle, and that the use of the lecithin as sold would be covered by other United States patents owned by American Lecithin Corporation and others.

The Glidden Co. decided to protect itself by securing licenses to manufacture and use lecithin from owners of United States patents and in August of 1934, endeavored to work out an arrangement with American Lecithin Corporation and Hansa-Muehle, but this was not consummated.

About August of 1934, The Glidden Co. learned for the first time that Archer-Daniels-Midland Co. was experimenting with the production of lecithin as a byproduct of the processing of soybeans and contemplated the use of the processes covered by the United States patents owned by Hansa-Muehle, believing that it could do so because of erroneous information given to Archer-Daniels-Midland Co. by Brinkman and Mergell of Germany. The Glidden Co. notified Archer-Daniels-Midland Co. that it contemplated the production of lecithin under the United States patents of Hansa-Muehle on an exclusive basis and that it would protect its rights under said patents by suit, if necessary.

Archer-Daniels-Midland Co. investigated the patent situation and became convinced that its production and sale of lecithin in the United States could not be made practicable, economical, or successful unless it obtained licenses under said patents.

The Glidden Co. expressed a willingness to give up its attempts to secure an exclusive license for the United States under said patents to the extent that Archer-Daniels-Midland Co. should have the same exclusive right as The Glidden Co. to produce lecithin in the United States under said patents and arranged the meeting between all of the respondents which resulted in the execution of the agreement dated December 5, 1934. The Glidden Co. was not producing and selling lecithin at the time the agreement of December 5, 1934, was entered into. In April of 1935, The Glidden Co., completed a plant in Chicago for the refining of lecithin and has continued to refine lecithin in said plant since that date with the exception of the period when the plant was out of commission, due to an explosion which occurred in October 1935.

(*g*) Prior to December 5, 1934, when the memorandum between respondents hereinafter described was signed, Hansa-Muehle, American Lecithin Corporation and Ross & Rowe, Inc., one or another, owned the following unexpired United States patents relative to the production and use of lecithin:

Patent No.	Inventor	Issue date
1,464,557	Bollman	8/14/23.
1,575,529	Bollman	3/2/26.
1,606,052	Bollman	11/9/26.
1,660,541	Bollman	2/28/28.
1,667,767	Bollman	5/1/28.
1,673,615	Bollman	6/12/28.
1,762,077	Rewald	6/3/30.
1,776,720	Bollman	9/23/30.
1,776,721	Bollman	9/23/30.

Patent No.	Inventor	Issue date
1,779,012	Rewald	10/21/30.
1,781,672	Working	11/11/30.
1,831,728	Working	11/10/31.
1,843,051	Thiele	1/26/32.
1,859,240	Jordan	5/17/32.
1,884,899	Bollman	10/25/32.
1,892,588	Schwieger	12/27/32.
1,893,393	Bollman & Schwieger	1/3/33.
1,895,424	Rewald	1/24/33.
1,903,397	Rewald	4/4/33.
1,917,734	Rewald	7/11/33.
1,934,005	Rewald	11/7/33.
1,936,718	Jordan	11/28/33.
1,938,864	Rewald	12/12/33.
1,946,332	Rewald	2/6/34.
1,965,490	Conway & May	7/3/34.
1,977,940	Frank	10/23/34.
1,982,186	Working	11/27/34.

(*h*) Prior to December 5, 1934, when the agreement between the respondents hereinafter described was entered into, the following unexpired United States patents covering the production and use of lecithin were owned by parties other than the respondents:

Patent No.	Inventor	Issue date
1,277,336	Moskovits & Jacobson	8/27/18.
1,290,971	Girard	1/14/19.
1,297,668	Ersler	3/18/19.
1,313,014	Posternak	8/12/19.
1,371,546	Bollman	3/15/21.
1,411,154	Bollman	3/28/22.
1,417,477	Bollman	5/23/22.
1,553,294	Baker	9/8/25.
1,555,517	Posternak	9/29/25.
1,586,145	Dengler	5/25/26.
1,631,887	Posternak	6/7/27.
1,653,959	Grum & Limpacher	12/27/27.
1,815,739	Reynolds & Epstein	7/21/31.
1,872,913	Dreyfus & Whitehead	8/23/32.
1,917,253	Epstein & Harris	7/11/33.
1,946,333	Rewald	2/6/34.
1,953,438	Schlack	4/3/34.
1,972,764	Engelmann	9/4/34.

(*i*) Prior to December 5, 1934, no lecithin produced in the United States had been exported.

(*j*) It follows from the foregoing facts, (in the light of the other facts found herein), that, in the sale and distribution of lecithin and lecithin products in trade and commerce in the United States

and between parties in the United States and parties in foreign countries, competition existed between respondents prior to December 5, 1934; that Archer-Daniels-Midland Co. and The Glidden Co. were potential competitors of one another and of Hansa-Muehle and Aarhus Oliefabrik; that there was actual and potential competition between respondents located in the United States and respondents and others located in foreign countries; that there was competition and potential competition between respondents over the development, use and ownership of patents and patent processes relating to the production and/or use of lecithin and lecithin products; and that ownership and interest in existing patents governing the production and use of lecithin and lecithin products were divergently held.

PAR. 5. (*a*) In December of 1934, Adrian D. Joyce, president of The Glidden Co., arranged a meeting between all of the respondents for the purpose, among others, of forming the American Lecithin Co.; and of December 5, 1934, the following memorandum of agreement was signed by the authorized representatives of the respondents Hansa-Muehle, Aarhus Oliefabrik, Archer-Daniels-Midland Co., The Glidden Co., American Lecithin Corporation, and Ross & Rowe, Inc. (as further appears at the end of said memorandum), viz:

Memorandum of the general principles concerning a plan for the manufacture, use and sale of lecithin and lecithin products in the United States and Canada, with the exception of Newfoundland, and the disposition of all patents, secret devices and secret processes now owned or hereafter invented or acquired relative to the manufacture, use and sale of lecithin and lecithin products, resulting from a conference held on December 3 and 4, 1934, at the office of The Glidden Company, 1963 Union Trust Building, Cleveland, Ohio, at which the following corporations were represented by the persons named: Dr. von Siebert, representing Hansa-Muehle G. m. b. H. and Hanseatische Muehlenwerke Aktiengesellschaft, two affiliated corporations duly organized and existing under the laws of Germany, having a place of business at Hamburg, Germany, hereinafter referred to as "Hansa"; Mr. Chr. Ruge, representing Aarhus Oliefabrik, a corporation duly organized and existing under the laws of Denmark, and having a place of business at Aarhus, Denmark, hereinafter referred to as "Aarhus"; Mr. Joseph Eichberg and Mr. Armand May, representing American Lecithin Corporation, a Delaware corporation of Atlanta, Georgia, hereinafter referred to as "Alco"; Mr. Whitney H. Eastman and Mr. W. H. Morris, representing Archer-Daniels-Midland Company, a Delaware corporation of Minneapolis, Minnesota, hereinafter referred to as "Archer"; Mr. Adrian D. Joyce and Mr. Clifton M. Kolb, representing The Glidden Company, an Ohio corporation of Cleveland, Ohio, hereinafter referred to as "Glidden"; and Mr. J. Edward Rowe, representing Ross & Rowe, Inc., a New York corporation, of New York, New York, hereinafter referred to as "Rowe."

I. Glidden shall cause a corporation to be formed, for the purpose of owning and granting licenses under patents and using and selling lecithin or phosphatides and products containing the same under the laws of the State of Delaware,

or such other State as Glidden and Archer may deem advisable, to be known as American Lecithin Co., hereinafter referred to as "American", with a nominal common capital consisting of 1,000 shares without par value, and sufficient paid-in capital to meet the requirements of the corporation laws of the State of incorporation, to be supplied by Glidden and Archer.

The affairs of said corporation shall be managed by a Board of Directors consisting of six members. Glidden shall elect and be represented by two of said members; Archer shall elect and be represented by two of said members; Hansa and Aarhus shall elect and be represented by one member; Alco shall elect and be represented by one member.

The stock of American shall be allocated on the following basis: 30% thereof to Glidden; 30% thereof to Archer; 15% thereof to Hansa; 15% thereof to Aarhus; and 10% thereof to Alco, for the account of Mr. Armand May and/or Mr. Joseph Eichberg.

There shall be no restriction upon the sale of the shares of stock of American between the parties mentioned herein, but if any of the parties mentioned herein shall decide to sell all or any part of their interest in the stock of American to any other person, firm or corporation not mentioned herein, they shall grant to American the option to buy said stock for a period of six days, at the then book value as shown by the books of American.

II. Hansa, Aarhus, Alco, Glidden, Archer and Rowe shall immediately assign to American upon its incorporation all their right, title and interest in and to the secrets concerning apparatus, devices and processes and Letters Patent and patent applications for the United States and possessions, and Dominion of Canada, which relate to the manufacture, use and sale of lecithin and lecithin products which they now own or may hereafter develop or require, and shall receive in consideration therefor the common stock of American above mentioned and/or such other considerations as are hereinafter mentioned. American shall grant to Hansa and Aarhus an exclusive license outside of the United States and possessions, and Canada, to use the processes and uses of lecithin and phosphatides which it develops.

III. American shall grant to Archer and Glidden an exclusive license covering the manufacture of lecithin and lecithin products, which lecithin and lecithin products shall be sold to American exclusively by Glidden and Archer in equal proportions, or on such other basis as Glidden and Archer may agree upon, at the cost thereof which shall conform to any Federal Code which may apply to the industry and shall include all items which are ordinarily included in determining manufacturing costs by public accountants.

American shall have the right to grant such sub-licenses covering the use and sale of lecithin and lecithin products as its Board of Directors may determine, and shall grant a nonexclusive license to Rowe for the sale of lecithin for use according to said patents, and for the life of such patents, and as long as Rowe conforms to the terms of said license agreement; said license not to be assigned or transferred by Rowe without the approval of American; and no license shall be granted to manufacturers other than Glidden and Archer without the approval of more than seventy-five percent of the issued Common Stock.

IV. Rowe shall act as selling agent of American under the above-mentioned license agreement, and shall sell lecithin and lecithin products at prices stipulated in said license agreement, and from time to time fixed by American, and shall receive as compensation therefor 30% of said selling prices, which shall

cover all selling expense and profit. Rowe agrees not to handle any lecithin or phosphatide products competitive with those sold by American, and not to divulge to others any information regarding the business of American. No other selling agents shall be appointed or granted a license to sell under said patents without consulting Rowe. This shall not apply to ordinary brokers and salesmen.

V. Hansa, Aarhus, Alco, Archer, Glidden and Rowe jointly and severally acknowledge all of the patents assigned to American are good and valid patents and that they will not directly or indirectly contest the validity of the same, or the validity of any patents which may be developed or acquired by American in the future.

VI. Glidden and Archer will supply such funds as are required for carrying on the operations of American as advances. Such advances shall bear interest at 6% and be returned to Glidden and Archer when the financial condition of American justifies such action. Credit shall be supplied to American by Glidden and Archer on an equal basis, covering American's requirements of lecithin and lecithin products, for a sufficient length of time for American to sell said products and collect the funds from the sale thereof.

VII. Glidden and Archer shall purchase lecithin and lecithin products from American for their own use at 70% of the ordinary price paid by outside customers for approximately corresponding grades and quantities, but the price in all cases shall be at least 25% above the cost of said lecithin and lecithin products to American.

VIII. All the parties hereto shall cancel and terminate all agreements or arrangements now existing which will in any way interfere with the carrying out of the principles and plan herein outlined, and Hansa and Aarhus specifically agree not to sell lecithin or phosphatides or products made with the same in the United States and the Dominion of Canada with the exception of Newfoundland, during the life of the patents covered by this arrangement, and American, Glidden, Archer, and Rowe likewise agree not to sell such products outside of United States, its possessions, and Canada.

IX. Glidden and Archer agree that they will pay to Hansa and Aarhus up to 8½% of the annual net profits of American for the purpose of assisting Hansa and Aarhus in paying obligations under their cartel arrangements, which Hansa and Aarhus agree to pay in full each year. Hansa and Aarhus also agree to use their best efforts to terminate said obligations under said cartel arrangements at the earliest possible date that they will cooperate with Archer and Glidden and American in determining the advisability of working out the details of such cancellation. As said obligations are reduced the said 8½% shall be reduced in the same proportion.

X. It is generally understood that Rowe will continue to purchase its supply of lecithin from Aarhus and Archer until such time as American is organized and is in a position to supply Rowe with lecithin and lecithin products. It is also generally understood that Alco will continue to secure its supply of lecithin from Hansa until such time as American is organized, at which time American will take over stocks of lecithin owned by Alco and will assume all the contracts of Alco relative to the sale of lecithin and lecithin products which are determined to be fair and reasonable. None of the parties hereto shall have the right to investigate the secret process of Aarhus without obtaining permission from Aarhus.

XI. It is generally understood that the terms of this arrangement shall apply to the fully owned subsidiaries of Glidden and Archer, and that it shall be binding upon the successors and assigns of all the parties hereto.

XII. It is understood that Hansa has granted a license to Jungmann for the United States and Canada covering the rubber industry.

XIII. It is understood that all profits in excess of the amount required for supplying the company with a reasonable amount of capital for its operation shall be distributed in dividends at least yearly.

Dated december 5, 1934.

HANSA-MUEHLE G. m. b. H. and HANSEATISCHE MUEHLENWERKE AKTIENGELSELLSCHAFT

By SIEBERT.
AARHUS OLIEFABRIK,
By CHR. RUGE.
AMERICAN LECITHIN CORPORATION,
By A. MAY, *Chairman.*
ARCHER-DANIELS-MIDLAND COMPANY,
By W. H. MORRIS, SR.
THE GLIDDEN COMPANY,
By CLIFTON M. KOLB.
ROSS & ROWE, INC.,
By J. EDWARD ROWE.

(*b*) The respondents who signed as aforesaid the foregoing memorandum together with the respondent American Lecithin Co. which was organized as contemplated therein, thereafter carried out the course of action contemplated in and by said memorandum, except as otherwise stated in this stipulation, and except that on or about the 14th day of March, 1941, the respondents American Lecithin Co., The Glidden Co., Archer-Daniels-Midland Co., and Ross & Rowe, Inc., entered into a written agreement, of which the following is a copy:

MEMORANDUM OF AGREEMENT between American Lecithin Company ("American"); The Glidden Company ("Glidden"); Archer-Daniels-Midland Company ("Archer"); Ross and Rowe, Inc. ("Rowe"); Hansa-Muehle G. m. b. H. and Hanseatiesche Muehlenwerke Atkiengesellschaft (two affiliated corporations collectively referred to herein as ("Hansa"); and Aarhus Oliefabrik ("Aarhus").

WHEREAS on December 5, 1934, representatives of the above parties (except American) signed a memorandum setting forth a proposed course of action, the essentials of which were (1) that a new corporation (American) should be formed; (2) that certain patent and other rights should be transferred to American in consideration of the issuance, with certain restrictions, of American stock to said parties; and (3) that Glidden, Archer, Rowe, Hansa and Aarhus should each enter into certain mutual obligations with American, which essentials of said course of action were thereupon fully consummated and executed; and

WHEREAS said memorandum contemplated, in addition to all of the foregoing, certain continuing obligations by and between the aforesaid parties (including American), some of which have been expressly waived, some of which have become academic by reason of subsequently enacted statute, some of which are believed to be legally unenforceable and have never been insisted upon, some of which were inadvertently phrased and not intended, and none of which are or have been at any time regarded as essential; and

WHEREAS American Lecithin Corporation, of Delaware, one of the parties whose representatives signed said memorandum, has gone out of business, wound up its affairs, and is no longer in existence;

NOW, THEREFORE, in consideration of the mutual benefits of this present action, the aforesaid parties mutually agree as follows:

I. In so far as the course of action contemplated by said memorandum of December 5, 1934 has, as aforesaid, been fully consummated and executed by the incorporation and organization of American, and its issuance of stock to said parties with said restrictions, and by the making of a separate agreement between American and Rowe, and the making (simultaneously herewith) of revised separate agreements between American and Glidden and between American and Archer, respectively, said memorandum is hereby confirmed.

II. In all other respects said memorandum and all agreements and understandings, if any, expressed therein and contemplated thereby, are hereby cancelled, leaving no continuing obligation whatsoever binding or affecting any of the aforesaid parties with respect to any of the other of said parties.

III. This agreement shall become fully binding upon American, Glidden, Archer and Rowe, if and when it shall be duly executed in behalf of all of them, and without (in view of practical difficulties arising from the war situation) procuring the execution thereof in behalf of Hansa and Aarhus. Regardless of whether or when this agreement shall be executed in behalf of Hansa or Aarhus, or both, American, Glidden, Archer and Rowe hereby relieve Hansa and Aarhus, however, of any and all continuing contractual obligations, if any there be, arising out of their execution of said memorandum of December 5, 1934, provided, however, that the foregoing shall not be construed as a consent to the importation into the United States in violation of American's statutory rights by Hansa or Aarhus of lecithin or other products manufactured under American's said patented processes; and the rights of Hansa and Aarhus to said American stock and dividends thereon, and all the other rights lawfully exercised by stockholders, are hereby confirmed.

(*c*) It follows from the foregoing facts (in the light of the other facts found herein), that respondents entered into an agreement and understanding on or about December 5, 1934, and thereafter carried out said agreement and understanding, to suppress, eliminate, lessen, and restrain competition between them in the production, sale, and distribution of lecithin and lecithin products in interstate trade and commerce in the United States and in trade and commerce between the United States and foreign countries; that respondents, by agreement and concerted action, through combination, attempted to and did: eliminate potential competition between The Glidden Co. and Archer-Daniels-Midland Co. and between The Glidden Co. and Archer-Daniels-Midland Co. and Aarhus Oliefabrik and Hansa Muehle for business in lecithin in the United States and in foreign countries; restrained each other from contesting patents governing the production, processing, or use of lecithin; and monopolized trade and commerce in lecithin and lecithin products in themselves.

PAR. 6. In furtherance of the aforesaid agreement of December 5, 1934, and pursuant to the purpose and plan of the respondents

provided for thereby, and to promote the ends which the arrangement set forth in the agreement was designed to reach, the American Lecithin Co., and the other parties respondent, have engaged in the acts and practices as hereinbelow described:

(*a*) The American Lecithin Co., for the purpose of making sales of lecithin, has, over a period of time, made threats to prospective purchasers of lecithin that said prospective purchasers would be sued for infringement of a patent or patents held by the American Lecithin Co. should they use lecithin purchased from a competitor to practice such patented invention without obtaining a license from American Lecithin Co., when in truth and in fact American Lecithin Co. did not intend to follow up such threat with a suit in all instances; and has attempted to promote the sale of its lecithin, a commodity not the subject matter of the Working patent No. 1,781,672 relating to chocolate and the method of making same, owned by American Lecithin Co., by using said patent for that purpose; and it has attempted to extend its monopoly under said Working patent No. 1,781,672 and other patents to promote the sale of its own unpatented commodity, lecithin, for use in processes, and in making products, covered by respondents' patents.

(*b*) The American Lecithin Co. has, at various times by correspondence and by personal contact, through its agents, with prospective purchasers, attempted to, and has, represented to the said prospective purchasers the facts regarding requirements for labeling prescribed by the United States Department of Agriculture and the United States Food and Drug Administration, as it understood them by calling their attention to a letter dated April 5, 1930, addressed to American Mills Co., Atlanta, Ga. (a predecessor in business of respondent, American Lecithin Corporation), on the letterhead of the United States Department of Agriculture, signed by L. D. Elliott, Acting Chief, Interstate Supervision, wherein the following was stated:

In our opinion, the designation "Purified Vegetable Fat" or "Purified Vegetable Oil" are not properly descriptive of the Soya bean lecithin product which is added to the chocolate coating. We are not advised of the exact composition of the product to be added to the coating but presume that it consists of perhaps 30 to 60 per cent of phosphatides and 40 to 70 per cent of soya bean oil. Such a mixture cannot be regarded as purified vegetable oil of fat. A wording should be chosen which will clearly show the true character of the ingredient and moreover will show that the ingredient in question is an added ingredient. If the product has the above indicated composition, a statement such as "—% soya bean lecithin and oil added" or "Soya bean lecithin and oil added" would probably be acceptable, but final comment on the wording used will necessarily await further advice from you as to the composition of the article.

And by calling their attention to an article entitled "Cacao Products Under the Federal Food and Drugs Act," appearing in "Manufacturing Confectioner," volume 11, No. 2, pages 34 to 36 (1931) wherein the author J. W. Sale, then and now of the Food and Drug Administration and in charge of chocolate, stated, under the subtitle, "Use of Lecithin," as follows:

> The definitions and standards for chocolate and cocoa (promulgated under the Food and Drugs Act of 1906) in their various forms do not provide for the presence of added lecithin. If therefore this ingredient is added in any proportion, its presence and the presence of the solvent or vehicle if the latter is not a normal ingredient, should be plainly declared in the labeling. If the addition of the lecithin results in the concealment of damage or inferiority, its use would not be permissible even though its presence is declared in the labeling. An article in which a deficiency in cacao butter is concealed by the use of lecithin will be classed as adulterated under the Act (Food and Drugs Act of 1906).

And American Lecithin Co. has advised said prospective purchasers on the basis of the aforesaid letter and article, that, in the opinion of American Lecithin Co., the use of said company's purified cocoa butter lecithin (sold under the trade names "Lexin" and "Yelkin") would not require declaration in the label on the packaged product of the fatty substance (cocoa butter) used as the carrier; whereas the use of soybean oil lecithin, including as a carrier the fatty substance, soybean oil, would require the declaration of said soybean oil content on the label; that American Lecithin Co. made such representations and rendered such opinions for the purpose and with the effect of inducing prospective purchasers to purchase its purified cocoa butter lecithin and, to that extent, to refrain from purchasing the ordinary soya lecithin from either American Lecithin Co. or its competitors.

It follows from the foregoing facts, (in the light of the other facts found herein), that the American Lecithin Co., pursuant to and in furtherance of the agreement and understanding of December 5, 1934, as aforesaid, for the purpose of diverting trade in lecithin and lecithin products to itself and away from competitors, has attempted to and has misled purchasers and prospective purchasers of lecithin into the mistaken belief that the United States Government has promulgated rules and regulations governing the labeling of products containing lecithin and lecithin compounds and has required labeling which the United States Government has not promulgated or required; and has unfairly attempted to promote the sale of its lecithin in competition with competitors of lecithin and lecithin products.

(*c*) American Lecithin Co. has disparaged competitors' products in that it has asserted to prospective purchasers of lecithin that

certain competitive products contained substances such as aluminum cleate, mineral oil, 140°-melting-point stearine, soybean meal, excess water, and/or excess fatty acids, to the extent and degree disclosed by chemical analyses without explanation, in many cases, except when requested, of the significance of such ingredients, and for the purpose of inducing prospective purchasers to purchase its lecithin and lecithin products instead of competitors' lecithin and lecithin products.

It follows from the foregoing facts, (in the light of the other facts found herein), that the American Lecithin Co. has attempted to and has taken unfair advantage of competitors by unfairly representing and describing competitors' lecithin and lecithin products.

(*d*) On or about May 22, 1939, American Lecithin Co. published a scientific treatise entitled "Viscosity of Chocolate" by Mr. Joseph Stanley, and disseminated it to purchasers and prospective purchasers of lecithin, in which the following statement appears:

> In this connection, we might mention that the new Food, Drug and Cosmetic Act of 1939 requires the legend "artifical flavor" when any synthetic flavor is used in chocolate. By "synthetic flavor" (or color) the law means any flavor (or color) made by chemical synthesis or other artifice.
>
> The use of a refined and purified lecithin in the carrier of pure cocoa butter (Lexin) is recommended under the new Act. If lecithin in a carrier of soya oil is used, both the soya oil as well as the lecithin has to be listed on the label.

The act referred to in the above article does not recommend the use of any particular product.

It follows from the foregoing facts, (in the light of the other facts found herein), that the publication and dissemination of the aforesaid treatise in the manner aforesaid was intended to create and had the capacity and tendency to create the erroneous and mistaken belief in the minds of purchasers and prospective purchasers of lecithin and lecithin products that the use of the American Lecithin Co.'s lecithin and lecithin products was recommended by the United States Government under the United States Food, Drug, and Cosmetic Act of 1939, and had the capacity and tendency to divert trade in lecithin and lecithin products to the American Lecithin Co. and away from competitors.

(*e*) The Glidden Co. and the Archer-Daniels-Midland Co. have followed the practice of selling exclusively to the American Lecithin Co. and have refrained from entering into competition with one another in the sale of lecithin produced by them under patented processes owned by American Lecithin Co.

(*f*) Except as herein otherwise stated, the American Lecithin Co. has refrained from exporting lecithin to territories where Aarhus Oliefabrik and Hansa-Muehle are engaged in the sale of lecithin, and have prevented and restricted and attempted to prevent and restrict importation into the United States of lecithin produced by Hansa and Aarhus in foreign countries under process patents owned by American Lecithin Co.

PAR 7. Subsequent to December 5, 1934, American Lecithin Co. acquired the following unexpired United States patents relative to the production and use of lecithin:

Patent No.	Inventor	Issue date
1,986,360	Rewald	1/1/35.
2,019,494	Jordan	11/5/35.
2,029,496	Bolen	11/12/35.
2,020,517	Rewald	11/12/35.
2,020,662	Schwieger	11/12/35.
2,024,398	Sorenson & Beal	12/17/35.
2,039,739	Rewald	5/5/36.
2,057,695	Schwieger	8/10/36.
2,115,088	Schwieger	4/26/38.
2,181,129	Heberer	11/28/39.
2,194,842	Wiesehahn	5/26/40.

Since December 5, 1934, 77 or more individuals and corporations have secured United States patents covering the production and use of lecithin.

PAR. 8. The American Lecithin Co. has instituted and prosecuted suits against alleged infringers, both direct and contributory, of its Working patent No. 1,781,672.

CONCLUSION

Respondents have combined, conspired, agreed, and cooperated to restrain, hinder, suppress, lessen, and eliminate competition between them in interstate trade and commerce in lecithin and lecithin products in the United States and between the United States and foreign countries and to that end have engaged in many acts and practices as herein found.

The acts and practices of respondents as herein found are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented competition between and among respondents in the sale of lecithin and lecithin 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 handicapped competitors engaged in the production and sale of lecithin

in the United States in the conduct of their respective businesses; have tended to and have vested in respondents control over the sale and distribution of lecithin and lecithin products, including the terms and conditions thereof, in interstate trade and commerce in the United States; have tended to and have diminished, lessened, and eliminated importation of lecithin from foreign countries to the United States and the exportation of lecithin and lecithin products from the United States to foreign countries; have tended to and have created false and mistaken beliefs and understandings regarding the nature and usefulness of competitors' products; have tended to and have created false and mistaken interpretations and understandings in the minds of purchasers and prospective purchasers of lecithin of the functions of the United States Government with regard to labeling of food products and of the rules and regulations promulgated by the United States Government concerning the labeling of lecithin and products containing lecithin; have unduly restrained trade and competition in interstate commerce in lecithin and lecithin products and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and a stipulation as to the facts entered into between the respondents herein—except Hansa-Muehle and Aarhus Oliefabrik—with W. T. Kelley, chief counsel of the Federal Trade Commission, approved by the Commission, which provides, among other things, that, without the presentation of further testimony, arguments, filing of briefs, 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 its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, American Lecithin Co., Joseph Eichberg, Armand May, Whitney H. Eastman, Clifton M. Kolb, Richard H. Horsburgh, Adrian D. Joyce, Ross & Rowe, Inc., The Glidden Co., Archer-Daniels-Midland Co., Shreve Archer, and American Lecithin Corporation, their officers, directors, representatives, agents, and employees, directly or indirectly, or through any corporate or other device, shall forthwith cease and desist from engag-

ing in or doing, in commerce, as "commerce" is defined in the Federal Trade Commission Act, either in combination or individually, the following acts or practices.

(*a*) Using unlawfully any patent or patents which may be held by them or any of them concerning the use, production, or processing of lecithin to divert trade in lecithin to themselves or away from competitors.

(*b*) Threatening to sue purchasers or prospective purchasers of competitors' lecithin for infringement of patents held by the American Lecithin Co., or any of them, but not in good faith, to enforce any patent rights which they may have, for the purpose of compelling or inducing such purchasers or prospective purchasers not to purchase lecithin from competitors.

(*c*) Threatening to sue agents, jobbers, or sellers or other distributors of competitors' lecithin for contributory infringement of any patents held by the American Lecithin Co., or any of them, not in good faith, to enforce any patent rights which they may have.

(*d*) Representing that lecithin sold by the American Lecithin Co., or by Ross & Rowe, Inc., or by any of the other respondents, is recommended for use by the Food and Drug Division of the United States Department of Agriculture, or any other branch of the Federal or State Governments, if in truth and in fact such is not the case.

(*e*) Disparaging competitors' products by creating or attempting to create in the minds of purchasers or prospective purchasers of lecithin the belief or understanding that lecithin produced, sold, or distributed by competitors contains deleterious or foreign matter, requires labeling not required by respondents' product, lacks refinement, is less efficacious, and is otherwise inferior to the lecithin products of the respondents unless in truth and in fact such be the case.

(*f*) Unlawfully using any patent or patents held by them or any of them in such a manner as to obtain income from the sale of unpatented lecithin rather than from the monopoly expressly granted by the patent or patents.

(*g*) Combining, conspiring, agreeing, or cooperating between themselves or anyone or more of them, or with others, to eliminate, restrain, or lessen competition between them in the sale of lecithin or lecithin products, by employing a common selling agency or otherwise; provided, that nothing herein shall prevent respondents from entering into or carrying out lawful arrangements for the exercise of rights under patents.

(*h*) Carrying out or entering into any agreement or doing any acts in pursuance of an agreement or understanding, that the American Lecithin Co. or any of the respondents connected with the production or sale of lecithin in the United States should refrain from selling or exporting lecithin to foreign countries.

(*i*) Entering into or carrying out any agreement or understanding with foreign producers or sellers of lecithin for the purpose of lessening, restricting, or curtailing importation of lecithin into the United States or the territories thereof.

(*j*) Carrying out or entering into any agreement or understanding to refrain from challenging or contesting patents, rights, or privileges concerning the production or use of lecithin or lecithin products held by any of them jointly or individually, which said respondents are not legally precluded from challenging or contesting.

(*k*) Combining, conspiring, or agreeing or cooperating, or entering into or carrying out any contracts to restrain trade or commerce in lecithin or lecithin products among the several States or with foreign nations.

(*l*) Monopolizing or attempting to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce in lecithin among the several States or with foreign nations.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondents Aarhus Oliefabrik and Hansa-Muehle.

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

IN THE MATTER OF

GIMBEL BROTHERS, INC., AND MORRIS KAPLAN & SON, INC.

MODIFIED CEASE AND DESIST ORDER

Docket 3364. Order, May 8, 1941

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, and in accordance with decree below set forth, in proceeding in question, in which original order issued on Dec. 29, 1939, 30 F. T. C. 328, and in which Circuit Court of Appeals for Second Circuit, on Jan. 6, 1941, in *Gimbel Brothers, Inc.* v. *Federal Trade Commission*, 116 F. (2d) 578, rendered its opinion, and on Jan. 22 issued its final decree, affirming aforesaid order of Commission by modifying same in certain particulars—

Requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of textile fabrics, to forthwith cease and desist from (1) using word "wool" or "woolens," or other word or term descriptive of wool, to describe, etc., any fabric, etc., not composed wholly thereof, and subject to proviso set forth with respect to fabrics, etc., composed in part only thereof, and (2) representing in any manner that fabrics, etc., offered or sold by it contain wool in greater quantities than is actually the case.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on December 29, 1939, the Commission made its findings as to the facts herein and concluded therefrom that the respondent Gimbel Bros., Inc., a corporation, had violated the provisions of Section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on January 6, 1941, the United States Circuit Court on Appeals for the Second Circuit rendered its opinion and on January 22, 1941, issued its final decree affirming the aforesaid order of the Commission by modifying said order in certain particulars;

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said decree:

It is ordered, That the respondent Gimbel Bros, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of textile fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "wool," or "woolens," or any other word or term descriptive of wool, to describe, designate, or in any way refer to any fabric or product which is not composed wholly of wool; provided, however, that in the case of fabrics or products composed in part of wool and in part of other fibers such words may be used as descriptive of the wool content, if there is used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof.

2. Representing in any manner whatsoever that fabrics or products offered for sale or sold by it contain wool in greater quantity than is actually the case.

It is further ordered, That the respondent Gimbel Bros., Inc., shall, within 30 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

It is further ordered, That the complaint be dismissed as to the respondent Morris Kaplan & Son, Inc., a corporation.

IN THE MATTER OF

CHARLES J. McCLENNON AND LILLIE M. McCLENNON, COPARTNERS, TRADING AS EMPIRE MONUMENT COMPANY

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

Docket 3939. Complaint, Nov. 2, 1939—Decision, May 8, 1941

Where an individual engaged in the manufacture and competitive interstate sale and distribution of tombstones, monuments, and footstones, designated as "Marble Durastone" and "Granite Durastone" and made, respectively, by mixing cement with marble aggregate or with granite dust and copper slag; in advertising her said products in periodicals and in catalogs, circulars, price lists, and other advertising material—

(*a*) Represented that they would not fade, crumble, or deteriorate from natural causes, were impervious to the effects of heat, cold, dampness, or dryness, and would retain their original beauty throughout the years;

Facts being that, as shown by tests, the average compressive strength of her said products was relatively much less than the minimum required for acceptability of cast stone under Federal specifications; average absorption of water by her said products was likewise in excess of such minimum requirements; freezing and thawing tests also indicated that products in question were of relatively poor quality and proved aforesaid claims to be without foundation; under exposure to natural weather conditions such products would show deterioration in from 10 to 20 years, and her "Granite Durastone" was not genuine granite aggregate in that the mixture included material other than natural granite and necessary binder or cement;

(*b*) Represented that tombstones, monuments, and footstones were being offered at special sale prices, through such statements as "Tombstone Sale," "Special Sale Prices," "Take Advantage of This Great Sale and Act Promptly Now. You will save from one-third to one-half the usual price. Don't wait. Beat the price rise"; and

(*c*) Represented that footstones would be given free with purchases of tombstones or monuments;

Facts being that the prices at which her said products were offered for sale and sold by her were her usual and customary prices, footstones were not given free as above set forth, but the cost thereof was included in the price charged for the tombstone or monument;

With effect of misleading and deceiving a substantial part of the purchasing public into an erroneous and mistaken belief as to the durability, quality, and price of her said products, whereby they bought a substantial portion thereof, and trade was unfairly diverted to her from competitors:

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

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

Mr. B. G. Wilson for the Commission.

Sutherland, Tuttle & Brennan, of Atlanta, Ga., for Lillie M. McClennon.

COMPLAINT

Pursuant to the provisions of the Federal 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 J. McClennon and Lillie M. McClennon, copartners, trading as Empire Monument 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 Charles J. McClennon and Lillie M. McClennon are copartners, trading as Empire Monument Co., with their office and principal place of business at 108 East Rock Springs Road NE., Atlanta, Ga. Respondents are now, and for some time last past have been, engaged in the business of manufacturing and selling imitation marble and granite tombstones and monuments in commerce between and among the various States of the United States and the District of Columbia.

Respondents cause their said products, when sold, to be shipped from their place of business in the State of Georgia to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said 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 their said business, respondents are now, and for more than 1 year last past have been, in substantial competition with other partnerships, and with individuals, 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 their said product, the respondents have disseminated and are now disseminating false and misleading statements and representations with respect to said products and the purchase price thereof. Such statements and representations are inserted in periodicals having a general circulation and in catalogs, 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:

"Marble Durastone" and "Granite Durastone."

The great durability and lasting qualities of our beautiful genuine marble and granite aggregate monuments.

Our guarantee! they will neither fade, crumble nor deteriorate in any way from natural causes but will retain their original beauty throughout the years.

Impervious to bad effects from either great heat or cold, dampness or dryness; therefore able to withstand extreme climates of all kinds.

A lasting tribute of love—will retain its beauty and carry its message of remembrance to coming generations.

Tombstone sale.

Special sale prices.

Take advantage of this great sale and act promptly now. You will save from one-third to one-half the usual prices—Don't wait! Beat the price rise.

Made under a formula used by our company for many, many years and has stood the test of engineers and time.

Footstone free.

PAR. 4. By the use of the foregoing representations, together with other representations similar thereto not specifically set out herein, the respondents represent that their said products are genuine natural marble and granite tombstones and monuments; that such stones will not fade, crumble, or deteriorate in any way from natural causes but will retain their original condition through many years; that they are impervious to both extreme heat and extreme cold and to dampness and dryness; that the prices at which such stones are advertised are much less than the customary and usual prices at which such stones are sold by respondents; that such stones have withstood tests made by engineers; that a footstone is given free by respondents with every order for a tombstone or monument.

PAR. 5. The foregoing representations are false, misleading, and untrue. In truth and in fact respondents' tombstones and monuments are not genuine marble or granite tombstones and monuments, but are maufactured by respondents from cement and other ingredients and are known as cast stone or artificial stone. Such stones will not retain their original condition through the years but will fade, crack, and deteriorate. They are not impervious to heat or cold or to dampness or dryness, but will crack, crumble, and deteriorate under ordinary weather conditions. The prices at which respondents' products are advertised for sale are not in fact reduced or "sale" prices and do not represent any saving to the purchaser, but are the prices at which such products are usually and customarily sold by respondents. Such stones have not been tested by

engineers. The footstone represented by respondents as being awarded free with each order is not in fact free, but the price thereof is included in the price paid for the tombstone or memorial.

PAR. 6. Tombstones and monuments carved from natural marble or granite have established among the members of the purchasing public a reputation for their beauty, durability, and other preeminent qualities, and as a result of such reputation the purchasing public has a decided preference for such products above tombstones and memorials which are cast stone or artificial stone.

PAR. 7. There are among the competitors of respondents, as mentioned in paragraph 2 hereof, many who do not misrepresent the composition or qualities of their products or the prices at which their products are advertised and sold.

PAR. 8. The use by the respondents 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 respondents' said products. As a result thereof substantial injury has been done and is being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondents as herein set forth 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 November 2, 1939, issued and subsequently served its complaint in this proceeding upon respondent Lillie M. McClennon, an individual trading as Empire Monument Co., charging her with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of 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 Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, report of the trial examiner, and briefs in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The business carried on under the trade name, Empire Monument Co., at one time was a partnership composed of Mrs. Lillie M. McClennon and her then husband, Charles J. McClennon. This partnership existed for a few months and was dissolved in 1937 when Mrs. Lillie M. McClennon separated from her husband, Charles J. McClennon, and acquired his interest in the partnership. Since such separation Charles J. McClennon has had no interest in or control over said business. Mrs. Lillie M. McClennon subsequently was divorced and remarried and is now Mrs. Lillie M. Sentell, and is an individual trading as the Empire Monument Co. Respondent Lillie M. Sentell is now, and at all times named in the complaint has been, engaged in the business of manufacturing, offering for sale, and selling tombstones, monuments, and footstones. Respondent has caused said products, when sold, to be shipped from her place of business in the State of Georgia to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned in the complaint has maintained, a course of trade in said tombstones, monuments, and footstones in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business respondent is now, and during all times mentioned in the complaint has been, in substantial competition with individuals, firms, and corporations engaged in the sale and distribution of tombstones, monuments, and footstones in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The tombstones, monuments, and footstones manufactured and sold by respondent are described and designated as "Marble Durastone" and as "Granite Durastone." Those designated as "Marble Durastone" are manufactured by mixing approximately one part of cement with three parts of marble aggregate, moistening this mixture and compacting it in a container or mold. Thereafter the so-called cast stone is removed from the mold and kept in a moist condition for approximately four weeks, or until the mixture has cured or hardened. A similar process is used to produce the tombstones, monuments, and footstones designated as "Granite Durastone," except that these are composed of a mixture of approximately one part cement and three parts of granite dust and copper slag.

PAR. 4. In order to induce the purchase of said products the respondent causes and has caused advertisements to be inserted in periodicals which circulate in many States and has distributed catalogs, circulars, price lists, and other advertising material among customers and prospective customers located in the several States. Among the representations contained in said advertisements are the following:

"Marble Durastone" and "Granite Durastone."

The great durability and lasting qualities of our beautiful genuine marble and granite aggregate monuments.

Our guarantee! They will neither fade, crumble nor deteriorate in any way from natural causes but will retain their original beauty throughout the years.

Impervious to bad effects from either great heat or cold, dampness or dryness; therefore able to withstand extreme climates of all kinds.

A lasting tribute of love—will retain its beauty and carry its message of remembrance to coming generations.

Tombstone sale.

Special sale prices.

Take advantage of this great sale and act promptly now. You will save from one-third to one-half the usual prices—Don't wait! Beat the price rise.

Made under a formula used by our company for many, many years and has stood the test of engineers and time.

Footstone free.

PAR. 5. Specimens of respondent's "Marble Durastone" and "Granite Durastone" were submitted to and tested by the National Bureau of Standards of the United States Department of Commerce to determine their strength and durability. The tests conducted by said Bureau showed that the average compressive strength of three specimens of respondent's "Marble Durastone" was 3,640 pounds per square inch, and the average of three samples of respondent's "Granite Durastone" was 3,710 pounds per square inch. These contract with a minimum compressive strength of 5,000 pounds per square inch required for

acceptability of cast stone under Federal specifications. The average absorption of water by respondent's products was also in excess of the minimum requirements of the specifications mentioned. The failure of respondent's cast stone products to meet such minimum requirements demonstrated that these products were of relatively poor quality.

Three specimens of each of respondent's products were also tested by the said Bureau by alternate freezing and thawing, and under this test pitting of some specimens became apparent after 40 cycles, one specimen split into two parts at 125 cycles, and crumbling commenced at 150 cycles.

There is no foundation in fact for respondent's representations that such products will not fade, crumble, or deteriorate in any way from natural causes but will retain their original beauty throughout the years; that they are impervious to bad effects from either heat or cold, dampness or dryness; or that they will retain their beauty for coming generations. Exposure of these products to natural weather conditions would result in their showing deterioration in from 10 to 20 years.

Respondent's representations that the product designated as "granite Durastone" is a genuine granite aggregate are false in that the mixture from which such products are, and have been, made includes materials other than particles or fragments of natural granite and the necessary binder or cement.

Respondent's representations that tombstones, monuments, and footstones were being offered at special sale prices are not true. The prices at which such products were offered for sale and sold by respondent were, and are, the usual and customary prices charged by respondent for such products.

Respondent's representation that footstones will be given free with purchases of tombstones or monuments is not a fact in that the cost of the footstone is included in the price charged for the tombstone or monument.

PAR. 6. The use by respondent of the statements and representations above 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 an erroneous and mistaken belief as to the durability, qualities, and prices of such products. And, further, as a result of this erroneous and mistaken belief members of the purchasing public have bought a substantial portion of respondent's products, and trade has been unfairly diverted to respondent from her competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, briefs in support of the complaint and in opposition thereto (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 respondent Lillie M. Sentell (formerly Lillie M. McClennon), an individual, trading as Empire Monument Co., or trading under any other name or names, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of cast stone tombstones, monuments, footstones, or other grave markers in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or by implication:

1. Representing that such products will not fade, crumble, or deteriorate from natural causes; or are impervious to the effects of heat, cold, dampness, or dryness; or will retain their original beauty throughout the years.

2. Misrepresenting in any manner or by any means the durability of such products or their resistance to the effects of exposure to natural weather conditions.

3. Representing as "free," either by the use of the word stated or any other word or term of similar import or meaning, any article the cost of which is included in the purchase price of other merchandise in connection with which such article is offered.

4. Representing that the usual and customary prices at which respondent offers to sell or sells such products are "sale" or "special

sale," or other special or reduced prices, either by the use of the terms stated or any other term or terms of similar import or meaning.

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

It is further ordered, That the complaint be, and the same is, hereby dismissed as to respondent Charles J. McClennon.

IN THE MATTER OF

HEARST MAGAZINES, INC.

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

Docket 3872. Complaint, Aug. 17, 1939—Decision, May 13, 1941

Where a corporation engaged in publication, among other periodicals, of its "Good Housekeeping" magazine, and in competitive interstate sale and distribution thereof, and of various "seals of approval" to manufacturers and distributors, and in operation, prior to recent discontinuance thereof, of a "shopping service"; and in maintaining, incident to its activities, its Good Housekeeping Bureau for Investigation of food, drugs, and cosmetics, and its Good Housekeeping Institute for investigation of mechanical devices and articles of household equipment; in its said magazine publicizing such testing services, and from time to time issuing buyers' guides for general distribution listing products or other commercial offerings represented by it as having been tested and approved by aforesaid Bureau and Institute—

(*a*) Represented that all products, services or other commercial offerings advertised in its said magazine were guaranteed by it, through statement, on certain page of each issue, "Good Housekeeping's GUARANTY PAGE Every Product Guaranteed as Advertised," and statements at the bottom of each page carrying advertisements, "Every product guaranteed as advertised—see page 6" or "Every product advertised is guaranteed—see page 6," and extensively publicized its guaranty, with tendency to cause readers to believe that guaranty in question was an unlimited one;

Facts being the undertaking, as stated on page referred to, was to investigate any advertised product found unsatisfactory by purchasers within 1 year and to replace product or refund money if product was defective;

(*b*) Authorized advertisers in its said magazine to publicize said guarantee in other publications and on labels attached to their products and on containers thereof, through use of emblems or shields reading "Guaranteed by Good Housekeeping as advertised therein" or "Guaranteed as advertised in Good Housekeeping," with result that through such use, independent of explanation above set forth, there was a tendency and capacity to cause members of the purchasing public to believe that products in question were unconditionally guaranteed by it;

(*c*) Represented that various products had been adequately and thoroughly tested in such a manner as to insure quality, material and properties thereof in relation to their intended usage and the fulfillment of the claims made therefor, through the use of seals of approval which it both authorized and recommended for merchandise of those who had applied to it for such service—following issuance of certificate certifying that product had been tested and approved—reproduction of which it likewise authorized in various advertising and circulars, and upon which seals, usually elliptical, appeared words "Tested and approved by Good Housekeeping Institute (or Bureau)," followed by notation "Conducted by Good Housekeeping Magazine" (or, in case of meat products, with word "Recommended" in place of words "Tested and

approved") and through publicizing in its said magazine its testing services, and through issuance from time to time of "buyers guides," listing products or other commercial offerings which it represented had been tested and approved by its said bureau or institute;

Facts being that, while tests were made before such seals of approval were issued, tests of mechanical devices, in some instances, and of food, drugs, and cosmetics generally, were not sufficient to assure fulfillment of claims made, and in some instances, with respect to commercial offerings, seals were issued without even adequate preliminary investigation;

(*d*) Authorized use of a great many different designs or forms for its emblems or shields, and seals or insignia, by various advertisers and distributors, and directly associated therewith its aforesaid testing facilities through articles in its magazine, and through statements with reference to guarantee and in circulars, booklets, and other publications; with tendency and capacity to mislead and deceive purchasers and readers into believing that all products bearing any emblem of "Good Housekeeping" magazine or advertised in conjunction therewith, had been thoroughly and adequately tested and approved and guaranteed by it when such was not the case; and

(*e*) Represented, directly and by implication, that all representations of and claims made for products, services or other commercial offerings appearing in advertisements in its periodicals were true, through statements in its magazine—usually in connection with discussion of its testing facilities and effect or purport of its guaranty of all advertising—such as "It means that the products or service you see advertised in Good Housekeeping will perform what is promised for them and do what is claimed they will do as stated in their advertisements in Good Housekeeping," and "Good Housekeeping carefully investigates the essential claims and satisfactory qualities of products or services before advertising is accepted;"

Notwithstanding the fact that many of such advertisements contained misrepresentations with reference to medicinal preparations, cosmetics, fabrics, and wearing apparel, food products, results to be obtained from the use of various articles of merchandise and the efficiency and reliability of services and other commercial offerings;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous beliefs above set forth and to induce members of said public to purchase its magazine, merchandise advertised therein, and merchandise bearing its seal of approval, because of such mistaken beliefs, with result that trade was diverted unfairly to it from its competitors aforesaid:

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

Before *Mr. Charles F. Diggs*, *Mr. John J. Keenan*, and *Mr. Webster Ballinger*, trial examiners.

Mr. James L. Fort and *Mr. L. E. Creel, Jr.*, for the Commission.

Mr. Isaac W. Digges and *Mr. Gilbert H. Weil*, of New York City, and *Mr. Frederic B. Warder* of Guy & Brookes, of Washington, D. C., for respondent.

Mr. Elisha Hanson, of Washington, D. C., for American Newspaper Publishers Ass'n, 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 Hearst Magazines, 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. (*a*) Respondent Hearst Magazines, Inc., is a corporation incorporated under the laws of the State of Delaware on or about February 25, 1927, as Hearst Magazines, Incorporated. The present name, Hearst Magazines, Inc., was adopted on or about January 7, 1936. Prior to January 2, 1936, respondent owned and controlled a subsidiary corporation known as International Magazine Co., Inc., a Delaware corporation. International Magazine Co., Inc., in turn had among other subsidiaries a corporation known as Good Housekeeping, Inc., a New Jersey corporation, and both International Magazine Co., Inc., and Good Housekeeping, Inc., were subsidiaries of Hearst Magazines, Inc. On or about January 2, 1936, International Magazine Co., Inc., was merged with Hearst Magazines, Inc., the respondent herein, and Good Housekeeping, Inc., became the immediate and wholly-owned subsidiary of respondent.

The respondent's office and principal place of business is located at 57th Street and Eighth Avenue in the city of New York, State of New York.

(*b*) Respondent is now, and for more than 12 years last past has been, engaged in publishing various periodicals and magazines and in the sale and distribution of such publications in commerce among and between the various States of the United States and in the District of Columbia. Among such publications so sold and distributed is a magazine known as "Good Housekeeping."

(*c*) Respondent is also engaged in the issuance of various seals of approval, for a consideration, to manufacturers located in the various States of the United States, and was until January 1, 1939, also engaged in the sale and distribution in commerce among and between the various States of the United States of numerous articles of merchandise by means of a so-called "shopping service." Respondent

also issues a "Guaranty" to advertisers in Good Housekeeping magazine.

(*d*) In the course and conduct of its business in connection with the sale and distribution of the magazine known as Good Housekeeping, the respondent causes said magazine to be delivered to the purchasers and prospective purchasers thereof, located in the various States of the United States other than the State of publication. Respondent maintains, and at all times mentioned herein has maintained, a course in trade in said magazines and the enterprises related thereto in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is engaged in substantial competition in commerce among and between the various States of the United States, and in the District of Columbia, with other corporations and with partnerships, firms, and individuals engaged in the following businesses in commerce among and between the various States of the United States and in the District of Columbia, to wit: Other magazines, newspapers, and periodicals, surety and guaranty insurance companies, mail order and other retail merchandisers, merchandisers who furnish a performance guaranty with their products, shopping services, testing laboratories, and others not specifically mentioned herein.

PAR. 3. For the purpose of inducing the purchase of the various articles advertised in said magazine, and thereby stimulating advertising in said magazine and the circulation thereof, the respondent has engaged in the following acts and practices:

(*a*) For several years immediately prior to and until January 1, 1939, respondent operated a shopping service through which readers of its magazine could and did purchase various articles of merchandise which were advertised in Good Housekeeping magazine. Orders for such merchandise, when received, were referred to the manufacturer of, or dealer in, such advertised article, who shipped direct to the purchasers located in the various States of the United States, the purchasers dealing entirely through the aforesaid shopping service. This shopping service was advertised as being a free service for the convenience of readers, when in truth and in fact, Good Housekeeping received substantial commissions from the sellers on all merchandise sold, amounting to 5 percent or more of the purchase price.

(*b*) Respondent publishes in each issue of its Good Housekeeping magazine, numerous claims and statements that it guarantees "EVERY product advertised in Good Housekeeping" and that every product is guaranteed as advertised. Throughout respondent's Good

Housekeeping magazine this alleged guarantee is featured in large display type, in connection with numerous statements with reference to the testing of the various products advertised in said magazine, in such a way as to import and imply that said Good Housekeeping magazine guarantees all products advertised in its pages to be as advertised and that they will perform as advertised.

(*c*) Throughout its advertising pages appears the foot-note: "EVERY product guaranteed as advertised—see page 6." On page 6 of each issue is printed in much smaller type than that used for the featured statements as to the guarantee, in an inconspicuous way, the following limitation on the general guarantee:

This is your guaranty. If you purchase any product advertised in this issue of Good Housekeeping within 1 year from its date and find the product unsatisfactory, we will carefully investigate your complaint and if the product is defective it will be replaced or your money refunded.

(*d*) Respondent also publishes in each issue, usually under the title "Consumers' Forum," which appears customarily within the first ten or twelve pages of the magazine, an article of interest to consumers, in which is stressed the service rendered by Good Housekeeping magazine in testing articles offered for advertisement, and guaranteeing the product of accepted advertisers. Typical of such statements is the following, printed in the February, 1939, issue of Good Housekeeping:

In its April issue of 1902 GOOD HOUSEKEEPING announced to its readers that from that date on it would guarantee all the advertisements printed in its pages. It publicly assumed full responsibility both for the satisfactory quality of the merchandise and the essential claims made by advertisers.

(*e*) Respondent also issues a Seal of Approval (elliptical in form, containing the words, "Tested and Approved," a cut of a star, followed by a serial number), which is issued by a division of respondent designated "Good Housekeeping Institute," for a limited class of products allegedly tested to establish whether the product will do the jobs intended and give satisfactory service for the length of time to be expected of a good product. The testing scope of the Institute is confined to mechanical household equipment, devices and utensils, and to household soaps and cleansers. After the approval by the Institute, the manufacturer of such product is granted the right to display the official seal of the Institute on the product itself, on the tags, labels, cartons, and in all advertising and trade literature. The certificate of approval issued by the Institute requires the manufacturer "to fulfill his obligations to consumers by servicing his products when necessary, by adjusting complaints" and not to misuse or abuse the privileges

granted. The users of such Seal of Approval are not required to be advertisers in Good Housekeeping magazine; in fact, a large majority of such certificates and seals of approval are issued to manufacturers who do not advertise in said magazine.

(*f*) A Seal of Approval is also issued by another division of respondent, designated "Good Housekeeping Bureau" for food products, cosmetics and pharmaceuticals, allegedly tested in its laboratories, to establish whether they are pure and free from adulterants or ingredients that might be harmful. This Seal is identical in appearance to that of the seal issued by the Institute except that where the Institute seal uses the words "By Good Housekeeping Institute," the seal of the Bureau shows it is issued "By Good Housekeeping Bureau." After approval by the Bureau, the manufacturer of such product is given the Bureau's certificate of approval, practically identical with that issued by the Institute (omitting, however, the requirement to service the product and adjust complaints), and is granted the right to display the official seal of the Bureau in connection with all advertising or merchandising of said product. Like the seal of approval issued by the Institute, it is not necessary that the user be an advertiser in Good Housekeeping magazine.

(*g*) In the case of packaged meats, the respondent issues a seal of approval in the same form as described above, except that the word "Recommended" is used instead of the words "Tested and Approved." Formerly the representation as to packaged meats was that they had been tested and approved.

(*h*) Certain types of merchandise, such as wearing apparel, textile floor coverings, etc., do not come within the official testing scope of either the Institute or the Bureau. When offered for advertisement in Good Housekeeping magazine, they are allegedly checked in general for quality, serviceability, and with respect to their advertising claims. When accepted for advertising in Good Housekeeping, they are covered by the so-called "Guarantee" of Good Housekeeping. Such advertisers have the right to use an emblem, not in oval form, containing the words "Guaranteed as Advertised in Good Housekeeping Magazine."

(*i*) The guaranty issued by the respondent is not in all instances the result of a scientific test of a product, but frequently is based upon general investigation thereof by a staff member. In such cases, where the advertiser is currently advertising in Good Housekeeping magazine, such advertiser is given permission to use the guaranty. He is further authorized to use the phrases "Guaranteed by Good Housekeeping as Advertised Therein" or "Guaranteed as Advertised

in Good Housekeeping," enclosed in the form of an emblem (provided such emblem is not in the shape of an oval and does not contain a star) which may be affixed to the merchandise itself or to labels, tags, containers, display or descriptive material, or consumer advertising.

(*j*) Because of the similarity of the verbiage and the universal use of the name "Good Housekeeping" in all of the aforesaid seals and symbols, many of the purchasing and consuming public are, or may be, confused, and misled into the belief that all products bearing any of the several seals have been scientifically tested and are guaranteed by Good Housekeeping magazine.

(*k*) The respondent enters into a cooperative merchandising agreement with various manufacturers of women's wearing apparel and a number of large department stores of the country. In furtherance of this arrangement, the respondent publishes articles in the general table of contents classification of "Fashions," fully illustrated, describing some particular item or items of merchandise and the prices at which same are sold. In these articles are listed the various department stores at which such described or pictured items of merchandise may be obtained. In this way, the particular items of merchandise are agreed upon monthly by their makers and vendors and are nationally featured and widely sold. In some cases stores make window displays, showing the models as featured in Good Housekeeping magazine, together with a large poster, at the side of which is a reproduction of the article published and a sign prominently displayed, "As Seen in Good Housekeeping."

(*l*) The respondent also published annually, until and including 1936, a "DIRECTORY of GUARANTEED MERCHANDISE" which it distributed throughout the United States. This directory listed all products advertised in Good Housekeeping magazine during the preceding year, and was described as "A Sales Manual and Reliable Buying Guide." Preceding the index to the guaranteed merchandise was set forth "Good Housekeeping's Guaranty to its Readers," substantially as it appears on page 6 of each issue of the magazine, to wit:

(NOTE.—Material hereafter underlined was italicized in Manual.)

It is the definite policy of GOOD HOUSEKEEPING to make its advertising pages trustworthy and reliable. *Every* product in GOOD HOUSEKEEPING is guaranteed by us as advertised herein.

If you purchase any product advertised in this issue of GOOD HOUSEKEEPING within 1 year from its date and find the product unsatisfactory, we will carefully investigate your complaint. If the product is defective, it will be replaced or your money refunded.

Products which come within the testing scope of Good Housekeeping Institute or Good Housekeeping Bureau must be tested and approved before they may be

advertised in GOOD HOUSEKEEPING. Advertisers of those products in GOOD HOUSEKEEPING may use the Bureau or the Institute Seal of Approval in their advertisements.

All other products are carefully examined and investigated by competent experts.

GOOD HOUSEKEEPING, further, examines every advertisement offered to it for publication and makes every effort to assure itself that essential claims are justified.

In said directory of guaranteed merchandise appear statements such as the following:

Women prefer to buy products advertised in Good Housekeeping because they know these products are dependable and Good Housekeeping itself guarantees them.

Merchants everywhere report, "No matter how well a product is known, it sells better when we tell our customers that it is *guaranteed by Good Housekeeping.*"

If you stock the products listed in this directory and tell your customers these products are *guaranteed as advertised in Good Housekeeping,* you will inevitably find selling easier. And you will inevitably make more sales.

This isn't mere theory. It's a fact that has been confirmed times without number by merchants handling all kinds of merchandise.

"*Here is an example,*" says the salesperson, "*of the care Good Housekeeping takes to make sure that all cosmetics it advertises are satisfactory in quality and will do what they claim to do. Every cosmetic advertised in Good Housekeeping has been tested with the same care and thoroughness. You see why you can't possibly go wrong when you buy a cosmetic Good Housekeeping advertises.*"

Because women everywhere believe that Good Housekeeping's Guaranty is a sure guide to satisfaction in buying, smart merchants find it pays to tie their own advertising up with Good Housekeeping. Ways in which this can be done are shown on these two pages and on page 20. Select products from this Directory to feature in your newspaper copy. List this merchandise in your advertisements with a caption like the following:

"*Good Housekeeping advertises only products it has proved by actual test or other examination are good value and sure to give satisfaction to the purchaser. We feature the following products—all Guaranteed as Advertised in Good Housekeeping. You can buy any of them with full confidence that you are getting your money's worth.*"

The cosmetics listed in these pages are the cosmetics your customers prefer.

Why should they?

Because they know that Good Housekeeping will not accept the advertising of any cosmetic preparation which contains harmful ingredients or which cannot perform what it promises.

Is a cosmetic safe to use? Will it perform what it promises? It's the job of the Bureau chemists—in cooperation with the experts of the Beauty Clinic—to make sure before the product is accepted for advertising in Good Housekeeping.

They satisfy themselves that the quality of the ingredients is satisfactory and that these same ingredients will enable the product to do what it claims to do.

Clothes and accessories offered to Good Housekeeping for advertising are checked for style and wearability before the advertising is accepted. This includes technical examination of such factors as color-fastness, launderability,

quality of materials and workmanship, and verification of special claims for the article; also a practical trying-out by 'wear squads' of women.

Remember—Good Housekeeping is today the buying guide for more than 2,000,000 women.

PAR. 4. (*a*) The use of the various forms of seals authorized and permitted by the several departments of Good Housekeeping magazine, coupled with the various assurances and representations appearing throughout articles and advertising matter in Good Housekeeping magazine, with reference to the testing facilities and the extent to which they are used by Good Housekeeping for the protection of its readers, is calculated to, and has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all articles advertised in Good Housekeeping magazine, or articles which bear the seal in one of its several forms, have been scientifically tested in properly constituted laboratories by some testing department of Good Housekeeping magazine.

(*b*) In truth and in fact, all the articles advertised in Good Housekeeping magazine, and all the articles carrying the various seals authorized by Good Housekeeping magazine, have not been tested and approved by any scientific laboratory, and the respondent does not sufficiently disclose to the readers of said magazine, and to the prospective purchasers of the articles advertised, that there is a difference in the seals, as a result of which such persons are led to believe that all such seals carry the assurance that all articles have been subjected to full testing facilities claimed by the respondent.

PAR. 5. (*a*) The use of such statements as that respondent "publicly assumed full responsibility both for the satisfactory quality of merchandise, and the essential claims made by advertisers" and other similar statements, all of which are emphasized and featured, is calculated to, and has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous belief that the guaranty covers the advertised performance of such merchandise.

(*b*) In truth and in fact, the so-called "Guaranty," is actually limited by its terms to a mere warranty of the physical construction or chemical composition of the product itself, with an agreement to replace or refund if, after complaint, Good Housekeeping deems such product "defective."

PAR. 6. The authorization of certain seals reading, "Guaranteed by Good Housekeeping as advertised therein," in the advertising pages of Good Housekeeping magazine and in various other consumer ad-

vertising, labeling, etc., is calculated to, and has the tendency and capacity to, and does, mislead and deceive members of the purchasing and consuming public into the erroneous belief that such articles so advertised, or labeled, are fully guaranteed by Good Housekeeping magazine. Such seals are so used, with the knowledge and consent of Good Housekeeping magazine, that they do not sufficiently disclose to such prospective purchaser or consumer that the only guaranty covering said product is a money-back guaranty of Good Housekeeping magazine.

PAR. 7. The aforesaid seals and certificates of approval have been so greatly publicized over a long period of years, together with the collateral advertisements and statements made in connection therewith, that there has been engendered in the minds of the purchasing and consuming public a belief that whenever any one of them is found on an article, or used in connection with the advertising of such article, the article itself is one which has been thoroughly tested and found to be as its advertiser claims it to be and to perform as its advertiser claims it will perform and that, failing such, the buyer thereof will be guaranteed against injury or loss.

PAR. 8. The practice of permitting the use of various seals by advertisers in periodicals other than Good Housekeeping and in other advertising, is calculated to, and does, have a tendency to mislead and deceive members of the purchasing and consuming public into the erroneous belief that such articles are advertised in Good Housekeeping magazine and are subject to, and covered by, the guaranty contained therein, when in fact the copy for many such advertisements is neither submitted to nor inspected by Good Housekeeping prior to publication.

PAR. 9. The practice of permitting and urging the use of the various forms of seals by advertisers and non-advertisers in describing, advertising, and labeling their products, places in the hands of such persons a means and instrumentality whereby members of the purchasing and consuming public are led to believe that all the statements in such advertising or representations are true and that said merchandise is fully guaranteed by Good Housekeeping or one of its various divisions, when in fact, many of such statements and representations are false, misleading, and untrue, and not guaranteed by Good Housekeeping.

PAR. 10. The use of the various seals, representations, and guaranties, together with statements appearing in various articles, principally under the heading of "Consumers' Forum," is calculated to, has the tendency to, and does, mislead and deceive members of the pur-

chasing and consuming public into the erroneous belief that Good Housekeeping verifies special claims made for an article, and accepts for advertising and advertises only those articles that will perform what is promised for them and do what it is claimed they will do.

PAR. 11. Through the use of the cooperative merchandising arrangement between the respondent and the various manufacturers and advertisers, together with the operation of the shopping service by the respondent company, and in its advertising generally, the representations in which are purportedly guaranteed, the respondent, acting in conjunction and cooperation with the manufacturers, advertisers, and distributors, falsely represents the constituent fiber or material of various articles of merchandise, the purity and wholesomeness of certain food products, the results which might be obtained from the use of certain cosmetics, the remedial or therapeutic qualities of various proprietary medicines, results obtained from, or the performance of, various other articles of merchandise, and benefits to be obtained from others among its "guaranteed" advertisers. Respondent's representations that it guarantees all advertisements lead its readers to believe that all things advertised in Good Housekeeping are and will perform as advertised, when in truth, such is not the fact.

PAR. 12. In the course and conduct of its business as above described, respondent in selling and distributing its magazine, Good Housekeeping, and in selling and promoting the sale and distribution of its seals and the sale of merchandise in interstate commerce, has engaged in the following acts and practices:

Represented in advertisements and articles the fiber content of various dresses and other clothing for women to be silk when, in truth and in fact, such dresses and other wearing apparel were composed of rayon, or fiber other than silk. Among and typical of such misrepresentations are the following:

In the June, 1937, issue of Good Housekeeping, in the style article entitled "Fashions" there is illustrated on page 73 a costume described as "Printed silk culottes by SPORTSEMBLE"; in the May 25, 1937, "Preview" sent by Good Housekeeping to retailers, describing the dresses to be featured in the forthcoming June Good Housekeeping, and sold by various department stores, is the same illustration just referred to, with the following representations:

Silk Culottes have desirable dressy look. These Sportsemble Culottes are smart burgundy and white silk; Saqui, 1350 Broadway, N. Y. C.

whereas the culottes pictured and all Saqui & Co. Sportsemble

Culottes were composed wholly of rayon and contained no silk whatsoever.

PAR. 13. Respondent has permitted the publication in its advertising pages of various advertisements, advertising products that were purportedly tested and guaranteed by Good Housekeeping, which contained grossly exaggerated and false claims for the products so advertised and purportedly guaranteed. Among and typical of this type of advertising were advertisements for products for which the following claims were made:

(*a*) A preparation alleged to have a vitamin content which would feed the capillaries and furnish nourishment to the skin; that it contained a life-giving element essential to the color and texture and that with its use dryness, wrinkles, coarse texture would disappear and youthful freshness would be swiftly restored, when in truth and in fact the product contained no such qualities.

(*b*) A preparation through which the reader was advised she could "Wash Sunlight into your Hair with New Shampoo and Rinse"; that she could bring out the full radiant loveliness of blonde or brown hair and that it washed the hair two to four shades lighter and brought out the lustrous golden sheen, the alluring highlights that make her so attractive. In truth and in fact, the preparation contained no such qualities.

(*c*) A bath powder which the manufacturers claimed would make the body beautiful easily and quickly, would cleanse the pores as they could not otherwise be cleansed and make skin imperfections disappear and the body take on new loveliness, when in truth and in fact the preparation contained no such properties.

(*d*) A cosmetic which it was claimed would furnish an extra supply of vitamins for the future needs of smart girls who cared to provide against the loss of the "Skin-Vitamin." The product would produce no such results.

(*e*) A hand lotion claimed to restore smoothness and beauty to hands within 37 seconds. The product would produce no such results.

(*f*) A cosmetic claimed to refine the pores to invisibility, remove puffiness from eyes, change sallowness to a transparent delicacy; cool, smooth, and freshen the texture of the skin and pick up the contours. In truth and in fact the preparation would produce no such results.

(*g*) A preparation represented to have been brought by a Traveling Merchant from Bagdad for use in treating chronic constipation, in

which it was alleged there were no drugs, when in truth and in fact it did contain drugs.

(*h*) A reducing preparation which was guaranteed "to cause the user to lose from one to three pounds the first week" and that users will not only look better but feel better; the preparation had no such qualities.

(*i*) A proprietary medicine which it was claimed would destroy pimples in 60 seconds and kill the "pimple germ," when in truth and in fact the preparation would not accomplish the results claimed.

(*j*) A preparation for the treatment of inflamed eyes which was allegedly endorsed by 6,000 eyesight specialists, when in truth and in fact the said preparation had not been endorsed as advertised.

(*k*) A butter featured as containing fine cream and "all its country sweetness", when in truth and in fact some of the butter was found to be, in whole or in part, composed of decomposed or putrid animal or vegetable substance.

(*l*) A butter which was advertised as of the highest quality, with a score of 93, when in truth and in fact it was shown that some of the alleged butter contained less than 80 per cent by weight of milk fat, which is the minimum required for butter.

(*m*) Raisins which were advertised as "California's finest—the most tender, meaty, full-flavored raisins you ever tasted", some of which were shown to have contained hydrocyanic acid in an amount which might have rendered them injurious to health.

(*n*) A powder to be sprinkled on false teeth plates for which it was claimed that the product "holds teeth firm and comfortable. Make breath pleasant", when in truth and in fact the powder did not accomplish the results claimed.

(*o*) The representation by an advertiser that the reader could earn an independent income, that hundreds were making big money, and that the reader was given an absolute warranty backed by a $1,000 gold bond, when there was no gold bond or adequate warranty and the claims were in truth and in fact grossly exaggerated.

The foregoing are merely cited as examples of a great many such grossly exaggerated and false advertisements appearing in the advertising pages of Good Housekeeping during the last several years, with its assurance "Guaranteed as advertised" or "EVERY product advertised is guaranteed."

PAR. 14. (*a*) In availing themselves of the privilege of Good Housekeeping to use the statement, "Guaranteed by Good Housekeeping as Advertised Therein," certain advertisers, with the knowledge and sanction of Good Housekeeping, have caused the words "as Advertised

Therein" appearing in said statement to be so blurred and indistinct as to be not readily discernible by, or perceptible to, the reader. The said Good Housekeeping magazine, although having promulgated the rule that all the words in its aforementioned legend shall be "in type of sufficient size to be clearly legible," nevertheless has published, and now publishes, advertisements in its own pages containing the authorized guaranty statement where the phrase "as Advertised Therein" is so small or blurred as to be hardly decipherable, and in some cases totally indecipherable, by the reader. Typical examples are to be found in the March 1939, Good Housekeeping magazine on pages 107, 180, 195, 202, 213, and 219. By permitting the words "as Advertised Therein" to appear in the pages of its magazine in violation of the provision of respondent's rule with reference to the size of type, respondent acts in conjunction with such advertisers in misleading and deceiving members of the purchasing and consuming public insofar as said guaranty appears to be general and without qualification or limitation.

(*b*) The use of the statement "Guaranteed by Good Housekeeping as Advertised Therein," even when the words "as Advertised Therein" are clearly legible, by advertisers in magazines other than Good Housekeeping, is ambiguous, confusing, and misleading, in that many of the purchasing and consuming public may understand such statement to mean that the products advertised in magazines other than Good Housekeeping are guaranteed by Good Housekeeping, and will not interpret the phrase "as Advertised Therein" to be a limitation upon the general guarantee.

PAR. 15. The statements used in the publication and distribution of its directory of guaranteed merchandise, and in other advertising, wherein the respondent in effect verifies special claims made for the articles and statements to the effect that it will accept advertising or issue its seal of approval only for an article that "will perform what it promises" and "do what it claims to do" are misleading and deceptive when used under the general caption "Guaranteed Merchandise," or similar captions, insofar as they have, or may have, the capacity and tendency to lead members of the purchasing and consuming public to believe that the performance of such articles advertised is guaranteed when such is not the fact.

PAR. 16. The use by the respondent of the aforesaid representations, acts, and practices as hereinabove set forth, has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken beliefs above set forth, and on account of such repre-

sentations members of the purchasing and consuming public have been, and are being, or may be, induced to purchase said respondent's magazine and the merchandise advertised therein in the mistaken and erroneous belief that such merchandise is, or was, as stated, and that the claims in connection therewith were, or are, justified and thereby trade has been, and is being, diverted unfairly to the respondent from its competitors hereinbefore mentioned who are likewise engaged in the publication and sale of magazines and who are engaged in the sale and distribution of various articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia. As a result thereof, injury has been, and is now being, done by respondent to competitors in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 17. 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 or deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 17, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, Hearst Magazines, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair or 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 to the allegations of the complaint by Isaac W. Digges, Gilbert H. Weil, and Frederic B. Warder, 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 said complaint, answer thereto, testimony and other evidence and report of the trial examiners upon the evidence and exceptions filed thereto (briefs in support of the complaint and in

opposition thereto having been waived and oral argument not having been requested), and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findngs as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Hearst Magazines, Inc., is a corporation organized on or about February 25, 1927, under the laws of the State of Delaware, with its principal place of business located at 57th Street and 8th Avenue in the city of New York, State of New York. Prior to January 2, 1936, respondent owned and controlled a subsidiary corporation known as International Magazine Co., Inc., a Delaware corporation. International Magazine Co., Inc., in turn, had, among other subsidiaries, a corporation known as Good Housekeeping, Inc., a New Jersey corporation, and both International Magazine Co., Inc., and Good Housekeeping, Inc., were subsidiaries of Hearst Magazines, Inc. On or about January 2, 1936, International Magazine Co., Inc., was merged with Hearst Magazine, Inc., the respondent herein, and Good Housekeeping, Inc., became the immediate and wholly owned subsidiary of the respondent and since that date has been operated and controlled by the respondent.

PAR. 2. Respondent, Hearst Magazines, Inc., is now, and for more than 12 years last past has been, engaged in publishing various periodicals and magazines and in the sale and distribution of such publications in commerce among and between the various States of the United States and in the District of Columbia. Among such publications so sold and distributed is a magazine known as "Good Housekeeping." In the course and conduct of its business in connection with the sale and distribution of the magazine known as Good Housekeeping, the respondent causes said magazine to be shipped in commerce among and between the various States of the United States to purchasers and prospective purchasers thereof located in various States of the United States other than the State of publication.

Respondent is also engaged in the sale and distribution of various seals of approval to various manufacturers and distributors. Respondent causes such seals of approval, 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.

For several years prior to January 1, 1939, the respondent was also engaged in the sale and distribution in commerce among and between the various States of the United States of numerous articles of merchandise by means of a so-called "shopping service."

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said magazines, seals, and items of merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms, and individuals engaged in the following businesses in commerce among and between the various States of the United States and in the District of Columbia to wit: publishers and distributors engaged in the sale and distribution of other magazines, newspapers, and periodicals; mail order and other retail merchandisers; merchandisers who furnish a performance guaranty with their products; shopping services; and others not specifically mentioned herein.

PAR. 4. The respondent operated a shopping service from 1920 to January 1, 1939, through which readers of its magazine could, and did, purchase various articles of merchandise which were advertised in Good Housekeeping magazine. Respondent carried in its magazine under the heading "shopping service" illustrated articles depicting and describing various styles of women's dresses, together with the statement that this service was free of charge and with the direction to prospective purchasers to send check or money order, size, and color to Good Housekeeping. Respondent, upon receiving such order, forwarded same to the dealer or manufacturer, who made delivery to the purchaser and billed respondent monthly for its total purchases. In this manner, the respondent represented that the service so rendered by it was free or without compensation when in truth and in fact respondent received a commission of from 5 percent to 7 percent from the sellers of the merchandise purchased through said service.

The shopping service and the practices engaged in therewith were terminated on January 1, 1939.

PAR. 5. Respondent represents that all products, services, or other commercial offerings advertised in the Good Housekeeping magazine are guaranteed by the respondent. As an example of this practice

there appears usually on page 6 of each issue of Good Housekeeping magazine, the following or some similar statement:

Good Housekeeping's
GUARANTY PAGE
Every Product Guaranteed
as Advertised

Beneath this title, which is usually in large type, appears an index of advertisers who have advertised in that particular copy of the magazine. Usually below the list of advertisers appears the following statement:

YOUR GUARANTY

It is the definite policy of Good Housekeeping to make its advertising pages trustworthy and reliable. Every product advertised in Good Housekeeping is guaranteed by us as advertised in our magazine.

Before we accept advertisements for mechanical household equipment, devices, and utensils; and household soaps and cleansers, such products are tested and approved by Good Housekeeping Institute. Before we accept advertisements for foods, cosmetics and pharmaceuticals, such products are tested and approved by Good Housekeeping Bureau. Advertising is not accepted on products that are disapproved. Approved products in these classifications are permitted to use the Good Housekeeping Seal of Approval.*

All other products are carefully examined by Good Housekeeping's technical staff. They, too, must prove satisfactory before advertising is accepted.

This is your Guaranty: If you purchase any product advertised in this issue of Good Housekeeping within 1 year from its date and find the product unsatisfactory, we will carefully investigate your complaint and if the product is defective it will be replaced or your money refunded.

(*NOTE.—The award of the Seal of Approval to a product is not contingent upon advertising in Good Housekeeping. As a matter of fact, of all the products that have received the Seal of Approval less than 30% have ever been advertised in Good Housekeeping.)

In the various issues of Good Housekeeping magazine at the bottom of each page upon which advertisements appear is the following statement:

Every product guaranteed as advertised—see p. 6.

or

Every product advertised is guaranteed—see page 6.

The representations with reference to guaranty of products advertised in Good Housekeeping magazine, of which the above is a sample have the tendency to mislead readers of the magazine and to cause them to believe that the guaranty of the respondent is an unlimited guaranty. This is particularly true since the guaranty is extensively

publicized, with the true nature of the guaranty more or less inconspicuously placed on page 6 of said magazine.

PAR. 6. In addition to the representations of guaranty appearing in respondent's publication Good Housekeeping magazine, the respondent also authorizes advertisers in said magazine to publicize such guaranty in other publications, on labels attached to their products, and on containers of products by use of an emblem or shield reading "Guaranteed by Good Housekeeping as advertised therein" or "Guaranteed as advertised in Good Housekeeping." Such advertisers, when advertising in newspapers and publications not owned or controlled by the respondent, and on labels and in circulars and other advertising material, use the above-described emblem or shield. Such use of such emblem or shield independent of the representations appearing in Good Housekeeping magazine in the manner hereinabove described, has the tendency and capacity to cause members of the purchasing public to believe that such products are unconditionally guaranteed by the respondent.

PAR. 7. In addition to the representations with reference to guaranty and the use of shields or emblems issued by the respondent as hereinabove described, the respondent also represents that various products have been tested or tested and approved by departments of the Good Housekeeping magazine. In this connection, respondent maintains departments known as Good Housekeeping Bureau and Good Housekeeping Institute for testing various products. The Good Housekeeping Bureau limits its activities to the investigation of food, drugs, and cosmetics, and the Good Housekeeping Institute to mechanical devices and articles of household equipment. In connection with the activities of these departments the respondent issues seals of approval, usually elliptical in form, containing the words "Tested and approved," a cut of a star followed by a serial number with the name "Good Housekeeping Institute" or "Good Housekeeping Bureau," as the case may be, with the further notation "Conducted by Good Housekeeping magazine." In the case of meat products the same form of seal is used except that the word "Recommended" is substituted for the words "Tested and approved." No charge is made by the respondent for the services rendered in making such tests preliminary to the issuance of seals, nor does it appear from the evidence that the issuance of any seal of approval is contingent upon advertising in Good Housekeeping magazine.

When the respondent issues a certificate certifying that the product has been tested and approved, it authorizes the use of seals of approval on the applicant's merchandise and the reproduction of such

seals in various advertising and in circulars as may be desired. The respondent issues price lists covering the cost of such seals, plates for the reproduction thereof, and duplicate and facsimile certificates. The applicant, under its contract with the respondent, is required to purchase all such seals, plates, and certificates from the respondent. In its various circulars the respondent recommends that the seal of approval be placed on the product itself and should follow the product right to the consumer and that the reproduction of the seal should appear in advertising in magazines, newspapers, trade papers, car cards, on outdoor billboards, in booklets, counter display cards, shipping cartons, and various advertising material.

In the Good Housekeeping magazine it is customary for the respondent to publish articles publicizing the testing services of the various departments of the Good Housekeeping magazine. In addition to these articles, the respondent from time to time issues Buyers' Guides for general distribution containing a list of products or other commercial offerings which it represents have been tested and approved by Good Housekeeping Bureau or Good Housekeeping Institute.

Through the use of such seals of approval and statements made with respect thereto, the respondent represents that all products bearing such seals of approval have been adequately and thoroughly tested in such a manner as to assure, at the time such products are sold to the consuming public, the quality, material, and properties of such products in relation to the intended usage thereof and the fulfillment of the claims made therefor in connection with the use of such insignia or representation.

Based upon the testimony of various witnesses with reference to the extent to which their products were investigated by the respondent and the volume of business conducted in said products, the Commission finds that while tests were made before seals of approval were issued by either of the above mentioned departments of Good Housekeeping magazine, tests of mechanical devices in some instances and tests of food, drugs, and cosmetics generally were not sufficient to assure the fulfillment of the claims made for such products. In some instances seals of approval with respect to services or commercial offerings have been issued without even an adequate preliminary investigation to fully protect those members of the purchasing public who might rely upon such seals of approval.

PAR. 8. The respondent does not require a uniform design for its shields, emblems, and insignia bearing the name Good Housekeeping magazine, but, instead, has authorized the use of a great many dif-

ferent designs by various advertisers and distributors. In addition, in discussing its various shields, emblems, and insignia in articles in its magazine, in recitations with reference to guaranty, and in various circulars, booklets, and other publications, the respondent directly associates and discusses the testing facilities and the operation of the various departments of Good Housekeeping magazine. The use and the authorization of the use, by the respondent of a great many different forms of seals, shields, emblems, and insignia and the association therewith of the testing facilities and operation of its various departments in various magazine articles and in booklets, circulars, and other advertising material are confusing to the average reader and have the tendency and capacity to mislead and deceive purchasers, prospective purchasers, and readers of respondent's magazine into believing that all products bearing a seal, shield, emblem, or insignia of Good Housekeeping magazine or advertised in conjunction with such seal, shield, emblem, or insignia have been thoroughly and adequately tested and approved and are guaranteed by the respondent, when in fact such products are not guaranteed by the respondent and have not been adequately tested by it.

PAR. 9. In addition to the acts and practices hereinabove set forth, the respondent also, by means of articles in its magazine and by other statements and representations, represents, directly and by inference, that all representations of, and claims made for, products, services, or other commercial offerings appearing in advertisements in its periodicals are true. Such representations are usually made in connection with discussion of the testing facilities of Good Housekeeping magazine and the effect or purport of the guaranty by it of all advertising appearing in its issues. Examples of such statements and representations are the following:

> It means that the products or service you see advertised in Good Housekeeping will perform what is promised for them and do what is claimed they will do as stated in their advertisements in Good Housekeeping.
>
> Good Housekeeping carefully investigates the essential claims and satisfactory qualities of products or services before advertising is accepted.

Based upon the testimony concerning advertisements issued on various products, the Commission finds that many of the advertisements appearing in Good Housekeeping magazine contain false, deceptive, and misleading statements and representations with reference to the therapeutic value of medicinal preparations, the properties and effectiveness of cosmetic preparations, the fiber content and qualities of fabrics and wearing apparel, the properties and purity of food products, the results to be obtained from the use of various articles of mer-

chandise, and the efficiency and reliability of services and other commercial offerings.

PAR. 10. The use by the respondent of the acts and practices as hereinabove set forth has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken beliefs above set forth, and on account of such representations, members of the purchasing and consuming public have been induced to purchase repondent's magazine, the merchandise advertised therein, and merchandise containing respondent's seal of approval in the mistaken and erroneous belief that such merchandise is as represented, that the claims in connection therewith are justified, and that said products have been thoroughly tested to fulfill all the claims made therefor, and as a result, trade has been diverted unfairly to the respondent from its competitors hereinbefore described.

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 trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the report of the trial examiners thereon and the exceptions of the respondent thereto (the filing of briefs by counsel and all other intervening procedure having been waived by the respondent), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Hearst Magazines, Inc., a corporation, its officers, directors, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its periodicals, magazines, or other publications, and the issuance or authorization of various seals of approval, emblems, shields or other

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

1. Representing, directly or indirectly, that all representations of, and claims made for, products, services or other commercial offerings described in advertisements appearing in any of its periodicals, magazines or other publications are true when any representation or claim contained in such advertisements is not in fact true.

2. Using, or authorizing, or allowing others to use, seals, emblems, shields, or other insignia, which represent in any manner that any food, drug, cosmetic, or therapeutic device, has been tested, or tested and approved by or at the instance of, the respondent, or any organization owned or controlled by it, or otherwise representing or authorizing or allowing others to represent, in any manner, that any such product has been tested, or tested and approved by, or at the instance of, the respondent, or any organization owned or controlled by it, unless and until the product concerning which such representation is made has, in fact, been adequately and thoroughly tested in such a manner as to assure, at the time such product is sold to the consuming public, the quality, nature, and properties of such product in relation to the intended usage thereof and the fulfillment of the claims made therefor in connection with the use of such insignia or representation.

3. Using, or authorizing, or allowing others to use, seals, emblems, shields or other insignia which represent in any manner that any mechanical device, or article of household equipment, other than those included in paragraph 2 hereof, has been tested, or tested and approved, by or at the instance of, the respondent, or any organization owned or controlled by it, or otherwise representing or authorizing or allowing others to represent, in any manner, that any such product has been tested, or tested and approved, by, or at the instance of, the respondent, or any organization owned or controlled by it, unless and until the product concerning which such representation is made has, in fact, been adequately and thoroughly tested in such a manner as reasonably to assure, at the time such product is sold to the consuming public, the quality, nature and properties of such product in relation to the intended usage thereof and the fulfillment of the material claims made in connection with the use of such insignia or representation.

4. Authorizing, using, or allowing the use of seals, emblems, shields, or other insignia which represent, directly or by implication, that an inquiry or investigation has been made by, or at the instance of, the respondent, or any organization owned or controlled by it, of a service or other commercial offering, (not including any product) in connection with which such seal, emblem, shield or other insignia is used,

unless and until the respondent has in fact made a sufficiently adequate and thorough investigation or inquiry as to assure the fulfillment of the claims made for such service or commercial offering in connection with the use of such insignia or representation.

5. Representing, directly or by implication, that any product, service, or other commercial offering advertised in its magazines, periodicals, or other publications, or for which respondent has authorized the use of any seal, emblem, shield, or other insignia, is guaranteed by respondent, unless such guaranty is without limitation, or if limited, unless all limitations upon such guaranty are clearly, conspicuously, and explicitly stated in immediate conjunction with all such representations of guaranty.

6. Authorizing, or allowing others to represent, directly or by implication, that any product, service, or other commercial offering advertised in its magazines, periodicals, or other publications, or for which respondent has authorized the use of any seal, emblem, shield, or other insignia, is guaranteed by respondent, unless such guaranty is without limitation, or if limited, unless all limitations upon such guaranty are clearly, conspicuously, and explicitly stated in immediate conjunction with all such representations of guaranty.

The provisions of this order are not to be construed so as to prohibit the use of the word "recommended" on any seal, emblem, shield, or other insignia when the product with respect to which such seal, emblem, shield, or other insignia is used has in fact been adequately and thoroughly tested by the respondent in such a manner as reasonably to assure the quality, nature, and properties of such product in relation to the intended usage thereof and the fulfillment of the material claims made in connection therewith, and when the form of such seal, emblem, shield, or other insignia is readily distinguishable by the consuming public from any seal, emblem, shield, or other insignia bearing any guaranty.

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

CHARLES N. MILLER CO.

MODIFIED CEASE AND DESIST ORDER

Docket 2826. Order, May 14, 1941

Modified order, pursuant to provisions of Section 5 (*i*) of Federal Trade Commission Act, in proceeding in question, in which (1) Commission on November 14, 1936, 23 F. T. C. 886, issued its modified order prohibiting sale of candy by lottery schemes or devices; and (2) Circuit Court of Appeals for the First Circuit, on June 10, 1938, in *Federal Trade Commission* v. *Charles N. Miller Co.*, 97 F. (2d) 563, 27 F. T. C. 1678, rendered its opinion modifying aforesaid modified order of the Commission in certain particulars and affirming said modified order in other particulars—

Requiring respondent, its officers, etc., in the offering for sale, sale and distribution in interstate commerce of candy and candy products, to cease and desist from (1) selling, etc., to jobbers, etc., for resale to retailers, candy so packed and assembled that sales thereof to the general public are to be made, or are designed to be made, by means of a lottery, etc., (2) supplying, etc., wholesalers, etc., with packages or assortments of candy which are used, or are designed to be used, without alteration or rearrangement of the contents, to conduct a lottery, etc., in sale or distribution of such contents, and (3) packing, etc., in the same package, etc., of candy for sale to the public at retail, pieces of candy of uniform size, etc., with centers of a different color, together with larger pieces of candy to be given as prizes to those procuring piece with center of a particular color; as in order below in detail specified and set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on August 4, 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 November 14, 1936, issued and served its modified order to cease and desist; and it further appearing that on June 10, 1938, the United States Circuit Court of Appeals for the First Circuit rendered its opinion modifying the aforesaid modified order of the Commission in certain particulars and affirming said modified order in other particulars;

Now, therefore, Pursuant to the provisions of subsection (*i*) of Section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said Court opinion:

It is ordered, That the respondent, Charles N. Miller Co., its officers, agents, representatives, and employees, in the offering for sale, sale,

and distribution in interstate commerce of candy and candy products, do cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, 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 or retail dealers 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, for sale to the public at retail, pieces of candy of uniform size and shape having centers of a different color, together with larger pieces of candy, which said larger pieces of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

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

IN THE MATTER OF

SIEGEL & ALENIKOFF 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 4427. Complaint, Dec. 20, 1940—Decision, May 14, 1941

Where three partners engaged in the manufacture of women's textile fabric coats and other garments so constructed as to have the appearance of the silky, tightly curled, and highly prized fur of Karakul lambs and in the interstate sale and distribution thereof, and four concerns which were their agents, with places of business in Cleveland, Boston, Detroit, and Chicago, respectively, serving as stock houses therefor—

(*a*) Represented that said textile fabric garments were made from the peltries of Persian lambs, young of the Karakul sheep, or from their wool, through use of words "Persian," "Genuine Babelamm," "Persian Fur Fabrics," "Imported" and others of like import, accompanied by pictorial representations of sheep or lambs and a woman wearing a coat with the appearance of fur and other illustrations of said textile fabric garments in advertisements in trade journals, window display cards and other advertising matter, and through tags and labels which they attached to said garments, some of which bore pictorial designs of sheep or lambs and trade names "Galykurl" and "Babelamm";

Facts being said garments were composed of wool and cotton or of wool, cotton and rayon, which chemically manufactured fiber, when spun or combined with wool, has the appearance and feel thereof, so that garments manufactured of fabrics so composed are practically indistinguishable from wool; and

(*b*) Failed to disclose or indicate in their labels, tags, and other advertising material the presence of rayon and cotton in their said product;

With effect of confusing, misleading, and deceiving a substantial portion of the purchasing public into the belief that their said representations were true and of thereby inducing purchase by it of substantial quantities of their said products; and through furnishing said misleading labels and tags and other advertising material to customers of placing in the hands of retailers an instrumentality whereby they might deceive or mislead members of the purchasing public into the erroneous belief that said textile fabric garments were made from the peltries or wool of Karakul lambs:

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. Leopold Bleich, 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 Joseph Henschel, Jacob Siegel, and Philip Alenikoff, individually and as copartners trading as Siegel & Alenikoff; H. M. Thorman and Alfred Schuster, individually and as copartners trading as H. M. Thorman; Joseph Bloomfield, an individual trading as Bloomfield Co.; Lou Littman, an individual trading as Lou Littman, and Sugar, Feinberg & Frankel, a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Joseph Henschel, Jacob Siegel and Philip Alenikoff, are individuals, trading as copartners under the trade name Siegel & Alenikoff, with their principal office and place of business located at 520 Eighth Avenue in the city of New York, in the State of New York.

Respondents H. M. Thorman and Alfred Schuster, are individuals trading as copartners under the trade name H. M. Thorman, with their principal office and place of business located at 2101 Superior Avenue, in the city of Cleveland, in the State of Ohio. Among other things, respondents H. M. Thorman and Alfred Schuster are agents for the respondents, Joseph Henschel, Jacob Siegel, and Philip Alenikoff, and their place of business is also a stock house for said respondents.

Respondent Joseph Bloomfield is an individual trading as Bloomfield Co., with his principal office and place of business located at 75 Kneeland Street, in the city of Boston, in the State of Massachusetts. Among other things, respondent Joseph Bloomfield is an agent for the respondents, Joseph Henschel, Jacob Siegel, and Philip Alenikoff, and his place of business is also a stock house for said respondents.

Respondent Lou Littman is an individual trading as Lou Littman with his principal office and place of business located at 153 East Grand River Avenue, in the city of Detroit, in the State of Michigan. Among other things, respondent Lou Littman is an agent for the respondents, Joseph Henschel, Jacob Siegel, and Philip Alenikoff, and his place of business is also a stock house for said respondents.

Respondent, Sugar, Feinberg & Frankel, is a corporation organized and existing under and by virtue of the laws of the State of Illinois,

with its principal office and principal place of business located at 318 West Adams Street, in the city of Chicago, in the State of Illinois. Among other things, respondent Sugar, Feinberg & Frankel is an agent for the respondents, Joseph Henschel, Jacob Siegel, and Philip Alenikoff, and its place of business is also a stock house for said respondents.

PAR. 2. Respondents, Joseph Henschel, Jacob Siegel, and Philip Alenikoff, trading under the trade name Siegel and Alenikoff, are now and for more than 2 years last past have been engaged in the manufacture of women's textile fabric coats and other garments, some made of fabrics composed of wool and cotton, and some of rayon, wool and cotton, and 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 to the other respondents named herein, to other retailers, and to members of the purchasing public. The individual respondents, H. M. Thorman, Alfred Schuster, Joseph Bloomfield, Lou Littman, and the corporate respondent Sugar, Feinberg & Frankel, are now and for more than 2 years last past have likewise been engaged in the business, among other things, of selling and distributing in commerce between and among the various States of the United States and in the District of Columbia, the women's textile fabric coats and other garments manufactured for them and shipped to them by the aforesaid respondents Joseph Henschel, Jacob Siegel and Philip Alenikoff.

In the course and conduct of their said businesses respondents cause said products, when sold, to be shipped from their respective places of business in the States of New York, Massachusetts, Michigan, and Illinois to purchasers 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 such textile fabric garments in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The words "Persian Lamb" and "Baby Lamb," as applied to or when used in association with coats, cloaks or similar garments for women, indicate to the purchasing public, and are accepted as meaning or indicating, peltries of the young of the Karakul breed of sheep originally found in the Bokharan region of Russia. Peltries truthfully designated as "Persian Lamb" are noted for their silky, tightly curled fur. Peltries truthfully designated as "Baby Lamb" are noted for a lustrous water wave pattern. Both said peltries bring high prices in trade and commerce throughout the world, and there is a preference among discriminating women throughout the world for

coats, cloaks, capes, or other garments made of "Persian Lamb" or "Baby Lamb."

PAR. 4. In the course and conduct of their businesses, as aforesaid, respondents, in connection with the offering for sale and sale of their textile fabric garments, refer to and designate their said textile fabric women's coats and other garments through the use of the word "Persian" and by the trade names "Galykurl" and "BABELAMM." Respondents advertise their 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 "Persian," "Genuine BABELAMM" and "PERSIAN FUR FABRICS," together with the word "Imported" and other words and phrases of like import and meaning, accompanied by pictorial designs of sheep or lambs and of a woman wearing a coat having the appearance of fur. Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

PERSIAN FUR-FABRIC COATS!

The coat here illustrated is but one of many we have patented for "Original Design" in the U. S. Patent Office. It typifies the styling charm of our entire line. And the PERSIAN FUR-FABRICS, both Imported and Domestic, are the most perfect replicas of the genuine furs they simulate that we have ever produced in our long career.

We are the FIRST and ONLY manufacturers in America to make "NEVA-MOTH" available for FUR-FABRIC COATS.

Only OUR Fur-Fabric Coats are tagged with this GUARANTEE BOND. For FIVE YEARS this GUARANTEE BOND is your protection against MOTH DAMAGE.

Respondents also attach 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 trade names "Galykurl" and "BABELAMM."

PAR. 5. The aforesaid textile fabric garments as manufactured, sold and distributed by the respondents are constructed so as to have the appearance of the silky, tightly curled, and highly prized fur of the young of the Karakul breed of sheep and convey the impression and induce the belief, from their appearance to the eye, that they are in fact made from or are composed of the peltries of "Persian" lambs, the young of such Karakul sheep, or are made from the silky hair or wool of peltries coming from such lambs. Respondents further employ in connection with the advertising and sale of their said textile fabric garments, large pictorial representations of a woman wearing a coat

having the appearance of fur, which serve further to emphasize the resemblance of said textile fabric garments to fur.

PAR. 6. In said ways and by said means, as set forth in paragraphs 4 and 5 hereof, the respondents represent by the use of the words "Persian," "Genuine BABELAMM," "Imported" and other words of like import and meaning, accompanied by pictorial designs of sheep or lambs and pictorial representations of a woman wearing a coat having the appearance of fur and other illustrations of said textile fabric garments that said textile fabric garments so sold and distributed by them 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.

Respondents, by the use of such labels and tags, as aforesaid, and other advertising matter published and disseminated as hereinabove described, have created and create the impression in the minds of purchasers and prospective purchasers of said textile fabric garments thus sold and distributed by respondents 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 the respondents, as aforesaid, are not made from the fur of Persian lambs or baby lambs or any other fur, nor are they made of a genuine fur fabric composed of the hair or wool of the peltries of the young of the Karakul breed of sheep, or the hair of any animal. Said textile fabric garments are, on the contrary, made of fabrics composed of wool and cotton, or of rayon, wool and cotton, having the appearance of silky, tightly curled fur, thus closely resembling "Persian Lamb" fur. Rayon is a chemically manufactured fiber or fabric and when spun and combined with wool has the appearance and feel of wool. Garments manufactured of a fabric so composed are, to the purchasing public, practically indistinguishable from wool. By reason of the quality and appearance created by the combination of rayon and wool, when manufactured to simulate wool, where the rayon content is not designated or disclosed, the purchasing public is led to believe that such product is composed of wool or fur. The labels, tags, and other advertising material employed by respondents as aforesaid, to describe, designate, or refer to their said products, do not disclose or indicate the presence of rayon and cotton in said textile fabric garments. Said textile fabric garments, further, are not imported either from Persia or elsewhere, but are of domestic manufacture.

PAR. 8. The use by respondents of the representations employed by them in the sale of their 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 purchasing public of substantial quantities of respondents' said products.

PAR. 9. Respondents, further, by furnishing said deceptive and misleading labels and tags and other advertising material to customers and causing said labels and tags to be placed upon their said textile fabric garments for resale to members of the purchasing public, place and have placed in the hands of retail dealers a means and instrumentality whereby they may deceive or mislead members of the purchasing public into the erroneous belief that said textile fabric garments, made from rayon and cotton and from rayon, cotton, and wool, do, in fact, consist of or are made 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 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 20, 1940, issued and subsequently served its complaint in this proceeding upon respondents Joseph Henschel, Jacob Siegel, and Philip Alenikoff, individually and as copartners trading as Siegel & Alenikoff, H. M. Thorman and Alfred Schuster, individually and as copartners trading as H. M. Thorman, Joseph Bloomfield, an individual trading as Bloomfield Co., Lou Littman, an individual trading as Lou Littman, and Sugar, Feinberg & Frankel, a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, 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 Joseph Henschel, Jacob Siegel, and Philip Alenikoff are individuals trading as copartners under the trade name of Siegel & Alenikoff, with their principal office and place of business located at 520 Eighth Avenue, in the city of New York, in the State of New York.

Respondents H. M. Thorman and Alfred Schuster are individuals trading as copartners under the trade name H. M. Thorman, with their principal office and place of business located at 2101 Superior Avenue, in the city of Cleveland, in the State of Ohio. Among other things, respondents H. M. Thorman and Alfred Schuster are agents for the respondents Joseph Henschel, Jacob Siegel, and Philip Alenikoff, and their place of business is also a stock house for said respondents.

Respondent Joseph Bloomfield is an individual trading as Bloomfield Co., with his principal office and place of business located at 75 Kneeland Street, in the city of Boston, in the State of Massachusetts. Among other things, respondent Joseph Bloomfield is an agent for respondents Joseph Henschel, Jacob Siegel, and Philip Alenikoff, and his place of business is also a stock house for said respondents.

Respondent Lou Littman is an individual trading as Lou Littman, with his principal office and place of business located at 153 East Grand River Avenue, in the city of Detroit, in the State of Michigan. Among other things, respondent Lou Littman is an agent for respondents Joseph Henschel, Jacob Siegel, and Philip Alenikoff, and his place of business is also a stock house for said respondents.

Respondent Sugar, Feinberg & Frankel is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 318 West Adams Street, in the city of Chicago, in the State of Illinois. Among other things, respondent Sugar, Feinberg & Frankel is an agent for

respondents Joseph Henschel, Jacob Siegel, and Philip Alenikoff, and its place of business is also a stock house for said respondents.

PAR. 2. Respondents Joseph Henschel, Jacob Siegel, and Philip Alenikoff, trading under the trade name Siegel & Alenikoff, are now and for more than 2 years last past have been, engaged in the manufacture of women's textile fabric coats and other garments, some made of fabrics composed of wool and cotton and some made of fabrics composed of rayon, wool, and cotton; and in the sale and distribution of same in commerce between and among the various States of the United States and in the District of Columbia to the other respondents named herein, to other retailers, and to members of the purchasing public. The individual respondents, H. M. Thorman, Alfred Schuster, Joseph Bloomfield, Lou Littman, and the corporate respondent Sugar, Feinberg & Frankel, are now, and for more than 2 years last past have been, likewise engaged in the business, among other things, of selling and distributing in commerce between and among the various States of the United States and in the District of Columbia the Women's textile fabric coats and other garments manufactured for them and shipped to them by the aforesaid respondents Joseph Henschel, Jacob Siegel, and Philip Alenikoff.

In the course and conduct of their said businesses respondents cause said products, when sold, to be shipped from their respective places of business in the States of New York, Massachusetts, Michigan, Ohio, and Illinois to purchasers 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 and commerce in such textile fabric garments among and between the various States of the United States and in the District of Columbia.

PAR. 3. The words "Persian Lamb" and "Baby Lamb," as applied to or when used in association with coats, cloaks, or similar garments for women, indicate to the purchasing public and are accepted as meaning or indicating peltries of the young of the Karakul breed of sheep originally found in the Bokharan region of Russia. Peltries truthfully designated as Persian Lamb are noted for their silky, tightly curled fur. Peltries truthfully designated as Baby Lamb are noted for a lustrous water wave pattern. Both said peltries bring high prices in trade and commerce throughout the world, and there is a preference among discriminating women throughout the world for coats, cloaks, capes, or other garments made of Persian Lamb or Baby Lamb.

PAR. 4. In the course and conduct of their businesses, as aforesaid, respondents, in connection with the offering for sale and sale of their textile fabric garments refer to and designate their said textile fabric women's coats and other garments through the use of the word "Persian" and by the trade names "Galykurl" and Babelamm." Respondents advertise their said textile fabric garments by means of trade journals having interstate circulation, by window display cards and other advertising matter which describes, designates, and refers to said textile fabric garments as "Persian," "Genuine Babelamm," and "Persian Fur Fabrics," together with the word "Imported" and other words and phrases of like import and meaning, accompanied by pictorial designs of sheep or lambs and of a woman wearing a coat having the appearance of fur. Among and typical of the statements and representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

PERSIAN FUR-FABRIC COATS!

The coat here illustrated is but one of many we have patented for "Original Design" in the U. S. Patent Office. It typifies the styling charm of our entire line. And the PERSIAN FUR-FABRICS, both Imported and Domestic, are the most perfect replicas of the genuine furs they simulate that we have ever produced in our long career.

We are the FIRST and ONLY manufacturers in America to make "NEVA-MOTH" available for FUR-FABRIC COATS.

Only OUR Fur-Fabric Coats are tagged with this GUARANTEE BOND.

For FIVE YEARS this GUARANTEE BOND is your protection against MOTH DAMAGE.

Respondents also attach 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 trade names "Galykurl" and "Babelamm."

PAR. 5. The aforesaid textile fabric garments as manufactured, sold, and distributed by the respondents are constructed so as to have the appearance of the silky, tightly curled, and highly prized fur of the young of the Karakul breed of sheep and convey the impression and induce the belief, from their appearance to the eye, that they are in fact made from or are composed of the peltries of "Persian" lambs, the young of such Karakul sheep, or are made from the silky hair or wool of peltries coming from such lambs. Respondents further employ in connection with the advertising and sale of their said textile fabric garments, large pictorial representations of a woman wearing a coat having the appearance of fur, which serve further to emphasize the resemblance of said textile fabric garments to fur.

PAR. 6. In said ways and by said means, as set forth in paragraphs 4 and 5 hereof, the respondents represent by the use of the words "Persian," "Genuine Babelamm," "Imported," and other words of like import and meaning, accompanied by pictorial designs of sheep or lambs and pictorial representations of a woman wearing a coat having the appearance of fur and other illustrations of said textile fabric garments, that said textile fabric garments so sold and distributed by them 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.

Respondents, by the use of such labels and tags, as aforesaid, and other advertising matter published and disseminated as hereinabove described, have created, and create, the impression in the minds of purchasers and prospective purchasers of said textile fabric garments thus sold and distributed by respondents 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. The textile fabric garments so labeled and advertised by the respondents, as aforesaid, are not made from the fur of Persian lambs or baby lambs or any other fur, nor are they made of a genuine fur fabric composed of the hair or wool of the peltries of the young of the Karakul breed of sheep, or wholly of the hair of any animal. Said textile fabric garments are, on the contrary, made of fabrics composed of wool and cotton, or of rayon, wool, and cotton, having the appearance of silky, tightly curled fur, thus closely resembling Persian Lamb fur. Rayon is a chemically manufactured fiber or fabric and when spun and combined with wool has the appearance and feel of wool. Garments manufactured of a fabric so composed are, to the purchasing public, practically indistinguishable from wool. By reason of the quality and appearance created by the combination of rayon and wool, when manufactured to simulate wool, where the rayon content is not designated or disclosed, the purchasing public is led to believe that such product is composed of wool or fur. The labels, tags, and other advertising material employed by respondents, as aforesaid, to describe, designate, or refer to their said products, do not disclose or indicate the presence of rayon and cotton in said textile fabric garments. Said textile fabric garments further, are not imported either from Persia or elsewhere, but are of domestic manufacture.

PAR. 8. The use by respondents of the representations employed by them in the sale of their 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 purchasing public of substantial quantities of respondents' said products.

PAR. 9. Respondents, further, by furnishing said deceptive and misleading labels and tags and other advertising material to customers, and causing said labels and tags to be placed upon their said textile fabric garments for resale to members of the purchasing public, place and have placed in the hands of retail dealers a means and instrumentality whereby they may deceive or mislead members of the purchasing public into the erroneous belief that said textile fabric garments, made from rayon and cotton, and from rayon, cotton, and wool, do in fact consist of, are are made 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 respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to the said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Joseph Henschel, Jacob Siegel, and Philip Alenikoff, individually and as copartners trading as Siegel & Alenikoff, H. M. Thorman and Alfred Schuster, individually and as copartners trading as H. M. Thorman, Joseph Bloomfield, an individual trading as *Bloomfield Co.*, *Lou Littman*, *an individual trading* as Lou Littman, and Sugar, Feinberg & Frankel, a corporation,

and its officers, and all of the various respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of textile fabrics, women's coats, and other garments, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "Persian," "Babelamm," or any other term or terms of similar import or meaning, to designate, describe, or refer to any textile fabric which simulates or resembles in appearance, pattern, or design the peltries of Persian lambs, the young of the Karakul breed of sheep.

2. Using the term "fur" in connection or conjunction with the term "Persian," or any other term or terms of similar import or meaning, to designate, describe, or refer to any textile fabric which simulates or resembles the peltries of Persian lambs, the young of the Karakul breed of sheep.

3. Representing or implying in any manner whatever that any textile fabric is made of the peltries of Persian lambs, the young of the Karakul breed of sheep, or that any textile fabric not made of the wool of said lambs is made of such wool.

4. Using any pictorial design of a sheep or lamb, or any other wool-bearing animal, in connection with any description of or reference to any textile fabric not made from the wool of the animal so depicted.

5. Representing or implying in any manner whatever that fabrics or garments of domestic manufacture are imported from any foreign country.

6. Advertising, offering for sale, or selling textile fabrics, garments, or other products composed in whole or in part of rayon without clearly disclosing by the use of the word "rayon" the fact that such fabrics or products are composed of rayon, and when such fabrics or products are composed in part of rayon and in part of other fabrics or materials, all such other fabrics or materials shall be truthfully designated in immediate connection or conjunction with the word "rayon" in letters of at least equal size and conspicuousness.

7. Supplying to others, with or in connection with any textile fabric hereinabove referred to, any labels, tags, or advertising materials containing any of the representations prohibited herein.

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

PETALSKIN TOILETRIES, INC.

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

Docket 4128. Complaint, May 7, 1940—Decision, May 15, 1941

Where a corporation engaged in interstate sale and distribution of its "Petalskin" line of cosmetics; by means of advertisements disseminated in various ways—

(*a*) Represented that its "Petalskin Face Cream" penetrated deeply into the pores and cleaned them out to an unusual degree, that it contained vitamin F, application whereof furnished nourishment to the skin and supplemented and restored the skin's supply of essential oils which, designated as vitamin F, diminished with age;

Facts being that such cream does not function as aforesaid or accomplish any such results, the skin not being capable of nourishment through external application, but only through systemic circulation, and while there are certain fatty acids sometimes erroneously referred to as vitamin F, no deficiency thereof occurs with aging and such a deficiency, if existent, could not be overcome by any external application of such acids; and

(*b*) Represented that its "Face Tonic" would not dry the skin and would close and refine the pores and that its "Cream Pastelle" worked its way into the pores and refined them;

Facts being said "Face Tonic" would not close and refine but would stretch the pores, and said "Cream Pastelle" would not have any effect on enlarged pores other than possible removal of superficial accumulation of dirt, so possibly helping nature to refine the pore openings; and

(*c*) Represented that its "Face Powder" does not clog the pores, nor interfere with skin's function of breathing and that its hand cream counteracts aging and penetrates the skin;

Facts being the skin does not breathe and said face powder does not have any of the effects claimed therefor;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such statements and representations were true, and with effect of causing it, because of such belief, to purchase said preparations:

Held, That such acts and practices, under the circumstances set forth herein, 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.

Mr. Leonard E. Lisner, 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 Petalskin Toiletries, 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, Petalskin Toiletries, 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 67 West 44th Street in the city of New York in the State of New York.

PAR. 2. Respondent, Petalskin Toiletries, Inc., is now, and for more than 1 year last past has been, engaged in the sale and distribution in commerce between and among the various States of the United States of certain toilet preparations designated and described, respectively, as "Petalskin Face Cream," "Petalskin Face Tonic," "Petalskin Cream Pastelle," "Petalskin Face Powder," and "Petalskin Hand Cream." Respondent, in the course and conduct of its said business during the time aforesaid, caused and does now cause its said preparations, when sold by it, to be transported from its said 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.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said products, by United States mails, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning the said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among

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

Petalskin * * * Face Cream

Rich in Vitamin F, this emulsified, deep pore cleanser and tissue cream has unusual penetrating as well as nourishing qualities * * *

Now, science serves beauty in a truly marvelously new way. It has discovered that the skin's normal supply of the oil essential * * * VITAMIN F * * * which diminishes as we grow older * * * and is vitally necessary for a young, glowing skin * * * can be supplemented by external application! Petalskin Face Cream, rich in Vitamin F, is a scientific cream, compounded to restore to the skin some of this precious vitamin.

Petalskin * * * Face Tonic

* * * does not dry even the most delicate skin. It will close and refine the pores * * *

Petalskin * * * Cream Pastelle

* * * It refines the pores * * *

Petalskin * * * Face Powder

Let your face breathe fresh air! So minute are the particles Petalskin Face Powder is made of * * * does not clog the pores. Those that remain * * * are so fine they do not interfere with the normal breathing of the skin!

Petalskin Hand Cream

* * * counteracts aging * * * is penetrating * * *.

PAR. 4. Through the use of the advertising statements hereinabove set forth, which pertain to the qualities, properties, and effects of its said preparations, as well as matters connected with their application and use, respondent has represented and does now represent (1) as to its product Petalskin Face Cream—that said product penetrates deeply into the pores of the skin and cleans out the pores to an unusual degree; that its application furnishes nourishment to the skin; that it contains vitamin F; that the skin's supply of the essential oils, designated as vitamin F, diminishes with age and that such supply is supplemented and restored to the skin by the external application of said cream; (2) as to its product Petalskin Face Tonic—that said product will not dry the skin and that it will close and refine the pores; (3) as to its product Petalskin Cream Pastelle—that said product works its way into the pores of the skin and refines the same; (4) as to its product Petalskin Face Powder—that said product does not clog the pores of the skin; that the skin breathes

and that said powder does not interfere with such function; (5) as to its product Petalskin Hand Cream—that said product counteracts aging and will penetrate the skin.

PAR. 5. In truth and in fact respondent's preparation Petalskin Face Cream does not penetrate deeply into the pores of the skin or to an unusual degree and does not cleanse out the pores any deeper than the external openings thereof. This preparation does not furnish nourishment to the skin since the skin cannot be nourished by external application but only through systemic circulation. There is no recognized vitamin now designated as vitamin F. There are certain unsaturated fatty acids that have been sometimes erroneously referred to as vitamin F but there is no deficiency of these factors in persons as they grow older. If the human body should be deficient in these factors, such deficiency could not be overcome by any external application of such fatty acids. The use of respondent's preparations Petalskin Face Tonic and Petalskin Cream Pastelle will not refine the pores of the skin or correct or remove the cause of enlarged pores, or close the pores of the skin, or have any effect thereon except that their use may remove superficial accumulation of dirt from the pore openings and may help nature to refine the pores. Respondent's Petalskin Face Powder does not have the property of not clogging the openings of the pores of the skin nor does it have the effect of not interfering with the breathing of the skin since the skin does not breathe. Respondent's preparation Petalskin Hand Cream does not penetrate the skin as that term is usually understood nor does it counteract aging of the skin since aging is a natural physiological process that is not affected by external applications.

PAR. 6. The aforesaid acts and practices used by respondent in connection with the offering for sale and sale of its said preparations 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 are true and to induce them to purchase said preparations on account thereof.

PAR. 7. 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 May 7, 1940, issued and subse-

quently served its complaint in this proceeding upon the respondent Petalskin Toiletries, 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 (no answer having been filed by the respondent), testimony and other evidence in support of the allegations of the complaint, including a stipulation of the facts upon the record, were introduced before John W. Addison, 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, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by the respondent or oral argument 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, Petalskin Toiletries, 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 67 West 44th Street in the City of New York, State of New York. On April 26, 1939 said corporation was adjudged a bankrupt by voluntary petition, and on January 18, 1940, was discharged from bankruptcy.

PAR. 2. Respondent, Petalskin Toiletries, Inc., was for more than 1 year prior to April 26, 1939, engaged in the sale and distribution in commerce among and between the various States of the United States of certain toilet preparations designated and described, respectively, as "Petalskin Face Cream," "Petalskin Face Tonic," "Petalskin Cream Pastelle," "Petalskin Face Powder," and "Petalskin Hand Cream." Respondent caused said preparations, when sold by it, to be transported from its place of business in the State of New York to purchasers therefrom located in various other States of the United States.

PAR. 3. In the course and conduct of its aforesaid business the respondent has disseminated, and has caused the dissemination of, false advertisements concerning its said products by United States mails and also in circulars and other printed or written matter which

were distributed in commerce among and between the various States of the United States, and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said products. Respondent has also disseminated and has caused the dissemination of false advertisements concerning its said products by various means, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of its products in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said false advertisements disseminated and caused to be disseminated as aforesaid are the following:

Petalskin * * * Face Cream

Rich in Vitamin F, this emulsified, deep pore cleanser and tissue cream has unusual penetrating as well as nourishing qualities * * *

Now, science serves beauty in a truly marvelously new way. It has discovered that the skin's normal supply of the oil essential * * * VITAMIN F * * * which diminishes as we grow older * * * and is vitally necessary for a young, glowing skin * * * can be supplemented by external application! Petalskin Face Cream, rich in Vitamin F, is a scientific cream, compounded to restore to the skin some of this precious vitamin.

Petalskin * * * Face tonic

* * * does not dry even the most delicate skin. It will close and refine the pores * * *

Petalskin * * * Cream Pastelle * * * It refines the pores * * *

Petalskin * * * Face Powder

Let your face breathe fresh air! So minute are the particles Petalskin Face Powder is made of * * * does not clog the pores. Those that remain * * * are so fine they do not interfere with the normal breathing of the skin!

Petalskin Hand Cream

* * * Counteracts aging * * *

is penetrating * * *

PAR. 4. Through the use of the statements, representations, and advertisements hereinabove set forth, all of which pertain to the qualities, properties, and effects of its said preparations, respondent has represented (1) that its product Petalskin Face Cream penetrates deeply into the pores of the skin and cleans out the pores to an unusual degree; that its application furnishes nourishment to the skin; that it contains vitamin F; and that said preparation, by external application thereof, supplements and restores the skin supply of essential oils designated as vitamin F, which diminish with age; (2) that its product Petalskin Face Tonic will not dry the skin and

will close and refine the pores; (3) that its product Petalskin Cream Pastelle works its way into the pores of the skin and refines such pores; (4) that its product Petalskin Face Powder does not clog the pores of the skin, that the skin breathes, and that said powder does not interfere with such function; and (5) that its product Petalskin Hand Cream counteracts aging and will penetrate the skin.

PAR. 5. Respondent's preparation Petalskin Face Cream does not penetrate deeply into the pores of the skin or to an ununsual degree, and does not cleanse the pores any deeper than the external openings thereof. This preparation does not furnish nourishment to the skin since the skin cannot be nourished by external application but only through systemic circulation. There are certain unsaturated fatty acids that have been sometimes erroneously referred to as vitamin F, but there is no deficiency of these factors in persons as they grow older. If the human body should be deficient in these factors, such deficiency could not be overcome by any external application of such fatty acids.

The use of respondent's preparation Petalskin Face Tonic will not close or refine the pores of the skin.

Respondent's preparation Petalskin Cream Pastelle will not correct or remove the cause of enlarged pores or close the pores of the skin or have any effect thereon, except that its use might remove superficial accumulation of dirt from the pore openings and may help nature to refine the pores.

Respondent's preparation Petalskin Face Powder does not have the property of not clogging the openings of the pores of the skin nor does it have the effect of not interfering with the so-called breathing of the skin, since the skin does not breathe.

Respondent's preparation Petalskin Hand Cream does not penetrate the skin as that term is usually understood nor does it counteract aging of the skin, since aging is a natural physiological process that is not affected by external applications.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and represenations with respect to the properties and effectiveness of its cosmetic products, 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 has caused a portion of the purchasing public, because of such erroneous and mistaken belief to purchase respondent's cosmetic 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, 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 report of the trial examiner thereon, brief in support of the complaint, 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, Petalskin Toiletries, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of its cosmetic preparations designated "Petalskin Face Cream," "Petalskin Face Tonic," "Petalskin Cream Pastelle," "Petalskin Face Powder," and "Petalskin Hand Cream," or any products of substantially similar compositions 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 by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference:

(*a*) That respondent's preparation Petalskin Face Cream penetrates deeply into the pores of the skin or that it cleanses the pores any deeper than the external openings thereof, or that the use of said preparation furnishes nourishment to the skin or supplies vitamin F or has any value in restoring the skin.

(*b*) That respondent's preparation Petalskin Face Tonic will close or refine the pores of the skin.

(*c*) That respondent's preparation Petalskin Cream Pastelle will refine or close the pores of the skin, correct or remove the cause of enlarged pores, or have any effect thereon in excess of removing the superficial accumulation of dirt from the pore openings.

(*d*) That respondent's preparation Petalskin Face Powder will not clog the openings of the pores of the skin.

(*e*) That its product Petalskin Hand Cream will penetrate the skin or counteract aging of the skin.

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 respondent's cosmetic preparations "Petalskin Face Cream," "Petalskin Face Tonic," "Petalskin Cream Pastelle," "Petalskin Face Powder," and "Petalskin Hand Cream," which advertisement contains any of the representations prohibited in paragraph 1 hereof and respective subdivisions thereof.

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

IN THE MATTER OF

REX MERCHANDISE CORPORATION OF AMERICA 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 3142. Complaint, June 3, 1937—Decision, May 16, 1941

Where four corporations and various individuals, moving spirits, officers, managers, or stockholders therein; cooperatively engaged in the competitive interstate sale and distribution to retailers of shaving creams and tooth pastes manufactured by one of said corporations, in the course of which they employed various trade names in common;

Acting together and with full knowledge that the prices marked on tubes and cartons as below set forth were false and fictitious and did not truthfully represent those at which such products were regularly and customarily sold to the consuming public——

(*a*) Sold various shaving creams and dental pastes under such names, among others, as "D. D. S.," "Sheray," "Royal Blue," "Dr. Sachs," in tubes and cartons ranging from 25 cents to $1 per unit, facts being said prices were fictitious, and usual and customary prices obtained by retail sellers of such products were actually from 10 to 29 cents; and

(*b*) Sold shaving creams under trade designations "Pine Tree" and "Sportsman Brushless Shaving Cream," manufactured from substantially similar formulas, with resale retail price of 75 cents marked on individual cartons thereof; facts being products in question customarily and regularly sold by retailers to members of the purchasing public at from 10 to 29 cents each;

With effect of misleading and deceiving purchasing public into the erroneous belief that such fictitious prices were the regular and usual retail selling prices of such products, with result that it purchased a substantial volume of said products, and trade was unfairly diverted to them from their competitors who truthfully represent their products:

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

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

Mr. S. Brogdyne Teu, II, for the Commission.

Mr. Arthur A. J. Weglin, of New York City, in his own behalf, and for Rex Merchandise Corp. of America, Peter Meyer and Alexander Hirshbein.

Mr. Nathaniel Katz, of New York City, for Sheray, Inc., William Sher, and Anna Sher, and Wilshire Sales Corp.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Rex Merchandise Corporation of America, and Peter Meyer and Wyette Meyer, individuals and officers of Rex Merchandise Corporation of America, Crown Laboratories, Inc., and Arthur A. J. Weglein, Alexander Hirshbein, and Francis Chorba, individuals and officers of Crown Laboratories, Inc., Sheray, Inc., and William Sher and Anna Sher, individuals and officers of Sheray, Inc., Wilshire Sales Corporation and William Sher, individually and as an officer of Wilshire Sales Corporation, hereinafter referred to as respondents, have been and are now using unfair methods of competition in commerce, as "commerce" is defined in said act 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 Rex Merchandise Corporation of America is a New York Corporation having its principal office and place of business located at 48 East Twenty-first Street, city of New York, State of New York.

Respondents Peter Meyer and Wyette Meyer are respectively president and secretary of Rex Merchandise Corporation. They have their principal place of business at the above-mentioned address of the Rex Merchandise Corporation of America. They both participate in the management and direction of the Rex Merchandise Corporation of America and its sales policies and general business operations.

Crown Laboratories, Inc., is a New York corporation having its principal office and place of business at 48 East Twenty-first Street, city of New York, State of New York.

Respondents Arthur A. J. Weglein, Alexander Hirshbein, and Francis Chorba are respectively president, vice president, and secretary-treasurer of respondent Crown Laboratories, Inc. They have their principal place of business at the above-mentioned address of the Crown Laboratories, Inc. They all participate in the management and the direction of Crown Laboratories, Inc., and its sales policies and general operations.

Respondent Sheray, Incorporated, is a New York corporation having its principal office and place of business located at 33 Union Square, city of New York, State of New York.

William Sher and Anna Sher are, respectively, treasurer and president of Sheray, Inc. They have their principal place of business at the above-mentioned address of Sheray, Inc. They both participate in the management and the direction of Sheray, Inc., and its sales policies and general business operations.

Wilshire Sales Corporation is a New York corporation having its principal office and place of business at 33 Union Square, city of New York, State of New York.

William Sher is president of the Wilshire Sales Corporation. He has his principal place of business at the above-mentioned address of the Wilshire Sales Corporation. He participates in the management and direction of the Wilshire Sales Corporation and its sales policies and general business operations.

PAR. 2. The corporate respondents have been for more than 1 year last past engaged in the sale and distribution of cosmetics, perfumes, and drug notions to retail dealers and peddlers purchasing for resale, and also to the public direct. In the course and conduct of their respective businesses they offer said products for sale and sell the same in commerce between the State of New York and the several other States of the United States and in the District of Columbia.

PAR. 3. When said products are sold, corporate respondents and their officers transport or cause the same to be transported from their respective places of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia.

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

PAR. 4. Respondents are now, and for more than 1 year last past have been, engaged in substantial competition with other individuals, firms, partnerships, and corporations engaged in the manufacture, sale, and distribution, or 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. 5. Respondents, in soliciting the sale and in the selling of their commodities and for the purpose of creating a demand on the part of the consuming public for said commodities, have advertised their commodities through the media of price lists and other printed matter published, issued, and circulated through the United States mails to their customers and prospective customers in the various States of the United States and in the District of Columbia. In the aforesaid ways

and by the aforesaid means respondents make and have made to the general public false and misleading statements with reference to the commodities offered for sale by them.

PAR. 6. Many articles and items of merchandise listed in said price lists and other printed matter are described as possessing retail values or prices greatly in excess of the actual selling price of respondents to the retailers or other purchasers and greatly in excess of the actual retail value or price thereof. A number of said items and articles of merchandise described in the aforesaid price lists and other printed matter have fictitious retail prices stamped or printed thereon or on the labels attached thereto or on the containers in which they are offered for sale and sold to the public.

PAR. 7. Representative of such fictitious price markings made by respondents regarding the selling price and value of the commodities thus offered for sale by them are the following:

"Stage and Screen Wave Set, Price $1.00;" "Lucky Strike Toilet Soap, Price $1.00;" "Banner Baby Castile Soap, Price 50¢;" "Favorite Baby Castile Soap, Price 75¢;" "Favorite Lavender Bath Soap, Price 75¢;" "Favorite Medicated Skin Soap, Price 75¢;" "Dr. Dade's Medicated Skin Soap, Price 75¢;" "Superfine Shaving Soap, Price 10¢;" "Hay-po Hair Straightener, Price 25¢;" "Atlas Foot Soap, Price 35¢;" "Quinoid's Bay Rum, Price 75¢;" "Lady Lee Powder, Price $1.00;" "Milady Combination Powder Set, Price $1.00;" "Arnoldi Bouquet Talcum, Price 35¢;" "Economy First Aid Kit, Price 25¢;" "Her Majesty Perfume, Price $12.50;" "Dango, the Advanced Scalp Conditioner, Price $2.00;" "Camelskin Latex, Price $4.00;" "Phantom Eye Lash Grower, Price 50¢;" and "Parker's Hair Dressing, Price 25¢."

PAR. 8. In truth and in fact the Stage and Screen Wave set is sold to the retail trade for 4½ cents per unit; Lucky Strike Toilet Soap is sold to the retail trade for 5 cents; Banner Baby Castile Soap is sold to the retail trade for 5 cents per unit; Favorite Baby Castile Soap is sold to the retail trade for 6 cents per unit; Favorite Lavender Bath Soap is sold to the retail trade for 6 cents per box; Favorite Medicated Skin Soap is sold to the retail trade for 6 cents per box; Dr. Dade's Medicated Skin Soap is sold to the retail trade for 7 cents per box; Superfine Shaving Soap is sold to the retail trade for 2 cents per box; Hay-po Hair Straightener is sold to the retail trade for 10 cents per can; Atlas Foot Soap is sold to the retail trade for 5 cents per cake; Quinoid's Bay Rum is sold to the retail trade for 7 cents per unit; Lady Lee Powder is sold to the retail trade for 4 cents per box; Milady Combination Powder Set is sold to the retail trade for 5 cents per unit; Arnoldi Bouquet Talcum is sold to the retail trade

for 7 cents per can; Economy First Aid Kit is sold to the retail trade for 5 cents per kit; Her Majesty Perfume is sold to the retail trade for 50 cents; Dango, the Advanced Scalp Conditioner is sold to the retail trade for 10 cents per unit; Camelskin Latex is sold to the retail trade for $1.00 per gross; Phantom Eye Lash Grower is sold to the retail trade for 5 cents per unit, and Parker's Hair Dressing is sold to the retail trade for 5 cents per unit.

PAR. 9. The said price lists and other printed matter of respondents contain other instances where fictitious retail prices are imprinted upon the labels or containers thereof.

PAR. 10. Over a period of many years manufacturers in many trades have adopted and followed the custom of marking or stamping on the item or article 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 purchaser.

PAR. 11. The suggested retail price so stamped or marked is intended to represent the cost to the manufacturer 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-marking 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. 12. For many years a substantial part of the consuming public has had and has expressed a marked preference for dental creams, shaving creams, and toilet articles and other similar household notions which are composed of superior ingredients and which are produced by the manufacturers 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. 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. 13. 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 prices thereof over ordinary

products sold for their regular price which is lower than the normal retail value of the superior products in the customary course of trade.

PAR. 14. The retail prices so stamped or printed as aforesaid upon respondents' 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 value. The retail prices so stamped or printed as aforesaid are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price marked.

PAR. 15. Said price lists and other printed matter published and distributed by respondents also contain other instances of misleading descriptions and representations of their products. For example, certain of their perfumes are labeled with the phrase "Perfumes of France."

PAR. 16. For many years a substantial part of the consuming public has had, and still has, and has so expressed, a marked preference for perfumes and toiletries which are manufactured or compounded in foreign countries, and especially in France, and then imported into the United States.

PAR. 17. The aforementioned representations and descriptions appearing on the aforesaid articles by labels with "Perfumes of France" printed thereon serve to lead purchasers and prospective purchasers into the erroneous and mistaken belief that the commodites so described and referred to are manufactured in France.

PAR. 18. In truth and in fact, the aforesaid articles are not manufactured in France or in any other foreign country, but are domestic products made or compounded in the United States.

PAR. 19. The aforesaid price lists and other printed matter published and distributed by the respondents, as well as the labels and other printed representations appearing on the cartons or containers of respondents' products contain other false and misleading representations. For example, certain of their tooth pastes are labeled with the phrases "Dr. Sachs Dental Cream," "Dr. Ross' Dental Cream," "Dr. Sachs Milk of Magnesia Tooth Paste," and "D. D. S. Perborated Tooth Powder."

PAR. 20. Over a period of many years the universally used professional designations for a Doctor of Dental Surgery have been and now are the abbreviations "Dr." and "D. D. S." When these abbreviations of the universally used professional designations for a doctor of dental surgery are used on the labels appearing on respondents' products and the cartons in which same are sold and offered for sale, these abbreviations serve as representations to purchasers and pros-

pective purchasers of respondents' dental creams that a doctor of dental surgery derived the formula from which said dental creams were compounded, and further, that a doctor of dental surgery was and is engaged in the compounding and manufacturing of said dental creams.

PAR. 21. In truth and in fact the use of the abbreviations for the professional designation of doctor of dental surgery by the respondents is false and misleading. No doctor of dental surgery derived the formula from which the respondents' dental creams were and are compounded. The said respondents' dental creams are not manufactured and compounded under the supervision and direction of a doctor of dental surgery.

PAR. 22. All of the respondents in soliciting the sale of and selling their commodities and for the purpose of creating a demand on the part of the consuming public for said commodities now and for more than one year last past have caused themselves to be represented through their letterheads and circulars, order blanks and general business stationery as manufacturers of toiletries, drug sundries, and notions, and importers of perfumes.

PAR. 23. In truth and in fact the above set out representations of the respondents are false and misleading. None of the respondents are importers of perfumes. None of the respondents are manufacturers of toiletries, drug sundries, and other notions, except Crown Laboratories, Inc.

PAR. 24. The aforesaid false and misleading advertising and representations, together with the aforesaid false and fictitious price markings, on the part of the respondents, serve as representations to a substantial part of the purchasing public that said respondents' shaving creams and other toiletries are generally superior or imported products produced and sold by the manufacturer 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 approximately the retail price stamped on said products or on their containers.

PAR. 25. There are among the competitors of the respondents manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, value, and origin of their respective products and their business status. There are also among the competitors of respondents manufacturers and distributors of like and similar products who refrain from advertising or representing through their price lists and other printed matter and through fictitious price markings that the merchandise offered for sale by them has a nature, merit, value, or origin that it does not have.

PAR. 26. The effect of the foregoing false and misleading representations and acts of the respondents in selling and offering for sale such items of merchandise as hereinbefore referred to, is to mislead a substantial part of the purchasing and consuming public in the several States of the United States and in the District of Columbia, by inducing them to mistakenly believe:

1. That the various items of merchandise described in respondents' price lists and other printed matter were and are of superior value, and were, and are, sold and distributed by respondents with the intent and purpose that said products should be sold at retail prices closely approximating the prices stamped thereon.

2. That the said products, because of the price marks fixed 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. That all of the respondents are manufacturers of toiletries, drug sundries, and notions.

4. That the perfumes described in paragraph 15 are manufactured in and imported from France, or some other foreign country.

5. That a doctor of dental surgery derived the formula from which certain of the respondents' tooth pastes and tooth powders were compounded, and, further, that a doctor of dental surgery supervises the manufacture of the same.

PAR. 27. The aforesaid false and misleading statements and representations on the part of the respondents have induced and still induce a substantial number of consumer purchasers of said commodities to buy the products offered for sale, sold, and distributed by respondents, on account of the aforesaid erroneous and mistaken beliefs. As a result thereof trade has been diverted from those competitors of respondents engaged in similar businesses and as herein referred to in paragraph 25. As a consequence thereof, substantial injury has been and is being done by respondents to competitors in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 28. The respondents, for more than 1 year last past, have entered into, among and between themselves and have since carried out and are still carrying out, an agreement, combination, understanding, and conspiracy, hereinafter more particularly described, by which agreement, combination, understanding, and conspiracy they have compounded, advertised, sold, and distributed in interstate commerce as herein set out tooth paste, shaving creams, and other toiletries and notions marked and branded with fictitious prices.

Further, as a result of said agreement, combination, understanding, and conspiracy the said respondents have caused and still cause the said tooth paste, shaving creams, and other toiletries and notions to be advertised in a false and misleading manner.

PAR. 29. Pursuant to and for the purpose of carrying out said agreement, combination, understanding, and conspiracy entered into, the said respondents, their officers and directors, have done the following things:

Respondent Crown Laboratories, Inc., and its officers, compound, sell and distribute to Sheray, Inc., Wilshire Sales Corporation, and Rex Merchandise Corporation of America the following toiletries: Dr. Ross' Dental Cream, Vogue Dental Cream, Chester Shaving Cream, Camel Shaving Cream, Palm and Olive Oil Shaving Cream, Dent Pure Milk of Magnesia Dental Cream, Gold Seal Dental Cream, Bay Rum Shaving Cream, D. D. S. Tooth Paste, Milky Way Dental Cream, Biltmore Tooth Paste, Clay Seal Dental Cream, Dr. Sachs Dental Cream, Crown Laboratories Dental Cream, Tallyho Shaving Cream, My Pal Shaving Cream, Sportsman Shaving Cream, and Royal Crown Dental Cream.

PAR. 30. All of the toiletries referred to in paragraph 29 above are marked and branded with fictitious price marks by the said respondent Crown Laboratories, Inc. The said respondent so marks and brands the said toiletries with the knowledge and understanding that when they are sold to the Rex Merchandise Corporation of America, Wilshire Sales Corporation, and Sheray, Inc., they will be offered for sale, sold, and distributed by the said respondents Rex Merchandise Corporation of America, Wilshire Sales Corporation, and Sheray, Inc., in interstate commerce, as herein set out.

PAR. 31. Respondents Rex Merchandise Corporation of America, Wilshire Sales Corporation, and Sheray, Inc., purchased from said Crown Laboratories, Inc., the aforesaid toiletries with the knowledge that they were fictitiously price marked and falsely branded and labeled. It was understood between the Crown Laboratories, Inc., and Rex Merchandise Corporation of America, Wilshire Sales Corporation, and Sheray, Inc., that said toiletries would be, and were, sold in interstate commerce.

PAR. 32. The Wilshire Sales Corporation owns the following trade names: "D. D. S. Dental Cream," "Sheray Dental Cream," "Royal Crown Dental Cream," "Dr. Sachs Dental Cream," "Royal Blue Dental Cream," "Dent Pure Dental Cream," "His Majesty's Dental Cream," "Sportsman Dental Cream," "My Pal Dental Cream," and "Clay Seal Dental Cream." The said respondent Wilshire Sales Cor-

poration licenses the respondent Crown Laboratories, Inc., to manufacture the aforesaid toiletries with the knowledge and understanding that the cartons and containers of these toiletries were, would be, and are marked with fictitious prices and were, would be, and are falsely labeled, and with the further knowledge that said products referred to would bear said fictitious price markings when sold by respondents Rex Merchandise Corporation of America, Wilshire Sales Corporation, and Sheray, Incorporated, in commerce, as herein set out.

PAR. 33. The aforementioned methods, acts, and practices of respondents are all to the prejudice of the public and of respondents' competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress 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 3, A. D., 1937, issued its complaint in this proceeding against respondents Rex Merchandise Corporation of America, Peter Meyer, and Wyette Meyer, individually and as officers of Rex Merchandise Corporation of America; Crown Laboratories, Inc., and trading under various names, and Arthur A. J. Weglein, Alexander Hirshbein and Francis Chorba, individually and as officers of Crown Laboratories, Inc.; Sheray, Inc., and William Sher and Anna Sher, individually and as officers of Sheray, Inc.; Wilshire Sales Corporation and William Sher, individually and as an officer of Wilshire Sales Corporation, and thereafter caused said complaint to be served upon all of said respondents except Wyette Meyer, charging them with using unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of a joint answer by respondents Sheray, Inc., Wilshire Sales Corporation, William Scher and Anna Scher (named in the complaint as Sher), testimony and other evidence in support of the allegations of the complaint were introduced by S. B. Teu, II, attorney for the Commission, and in opposition to the allegations of the complaint by Nathaniel Katz, attorney for respondents Sheray, Inc., Wilshire Sales Corporation, William Scher and Anna Scher, before Edward E. Reardon, 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 answers thereto, testimony and other evidence, the report of the trial examiner thereon 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. Respondents Rex Merchandise Corporation of America and Crown Laboratories, Inc., are corporations, having been incorporated under the laws of the State of New York in, or before, A. D., 1934, and having their places of business in the same premises, at 48 East Twenty-first Street, in the city and State of New York.

Respondents Sheray, Inc., and Wilshire Sales Corporation are corporations, having been incorporated under the laws of the State of New York in A. D. 1932 and A. D. 1935, respectively, and having their places of business in the city and State of New York.

Respondent Peter Meyer is president and treasurer of respondent Rex Merchandise Corporation of America, and also manager of its business.

Respondent Alexander Hirschbein (named in complaint as Hirshbein) is vice president of respondent Crown Laboratories, Inc., was the originator and moving spirit in the organization of said corporation and is in charge of its business.

Respondent Frances Chorba (named in complaint as Francis) is the sister of respondent Alexander Hirschbein, owns most of the stock of respondent Crown Laboratories, Inc., and was formerly president of said corporation, being succeeded in said office by respondent Arthur A. J. Weglein, the latter, in turn supervising and directing the affairs of the corporation for the purpose of protecting Frances Chorba's interests therein.

Respondent William Scher (named in complaint as Sher) is the president and manager of respondent Wilshire Sales Corporation, and also treasurer and manager of the business of Sheray, Inc., of which respondent Anna Scher (named in complaint as Sher) is the president. Respondents Anna Scher and William Scher are the owners

of the capital stock of Sheray, Inc., and of Wilshire Sales Corporation.

PAR. 2. Respondents Rex Merchandise Corporation of America, Crown Laboratories, Inc., Sheray, Inc., and Wilshire Sales Corporation, are and have been engaged, in cooperation with each other, in the business of selling shaving creams, tooth pastes and other toilet articles, in commerce, to retail dealers located in States other than the State of New York, and have caused their said products, when so sold by them, to be transported from New York to the purchasers thereof located in such other States.

PAR. 3. In the course and conduct of their said business, respondents have been and are in substantial competition with other corporations, individuals, and firms engaged in the sale in commerce between and among the several States of the United States and in the District of Columbia, of shaving creams, tooth pastes and other toilet articles.

PAR. 4. In connection with the operation of their business involving the sale of various shaving creams, dental pastes and toilet articles as aforesaid, respondents have employed and have permitted, and do employ and do permit, each other to use and employ various trade names owned by them. Respondent Sheray, Inc., owns and employs, among others, such trade names as D. D. S., Royal Blue, Dr. Sachs, Sheray, Paramount, Scientific, Royal Crown, Tally Ho, Her Majesty and His Majesty. Respondent Crown Laboratories, Inc., has the right to use and employ and has used and employed, among the aforesaid trade names, the trade names Royal Crown Dental Cream, Dr. Sachs Dental Cream and Sheray Dental Cream, and in addition, the further trade names of Pine Tree Dental Cream, Dr. Ross' Dental Cream, and Sportsman's Shaving Cream. Respondent Rex Merchandise Corporation of America is a selling organization and sells various products, including shaving and dental creams supplied to it by Crown Laboratories, Inc., under the trade names referred to above.

Crown Laboratories, Inc., under an agreement entered into between it and Sheray, Inc., manufactures on a royalty basis, among others, the shaving creams and tooth pastes sold under the trade names D. D. S., Sheray, Royal Blue, Dr. Sachs, Tally Ho, Scientific, Paramount, Royal Crown, and Her Majesty. The agreement between Crown Laboratories, Inc., and Sheray, Inc., among other things, provided that Crown Laboratories, Inc., was to furnish Sheray, Inc., all of the requirements of the latter in such products for the State of New York and that Crown Laboratories would sell only outside of New York State. Shaving creams and dental pastes, however, other than those mentioned above, have been and are sold and delivered by Sheray,

Inc., and Wilshire Sales Corporation to purchasers located in States other than New York.

The tubes and cartons in which the products above mentioned manufactured by Crown Laboratories, Inc., have been and are packed, prepared for sale and sold by Crown Laboratories, Inc., Sheray, Inc., and Wilshire Sales Corporation, were and are delivered or caused to be delivered, by Sheray, Inc., to Crown Laboratories, Inc.

PAR. 5. The various shaving creams and dental pastes above mentioned, among others sold by respondents, respectively, were and are sold in tubes enclosed in cartons, on which cartons and tubes, among other things, suggested retail sales prices of from 25 cents to $1 per unit package are printed. Said prices so printed were and are fictitious. For such products so price-marked, the usual and customary retail prices obtained by retail stores or sellers at retail are actually anywhere from 10 to 29 cents, and all of the respondents knew that the prices so marked upon the individual packages of the respondents' products were not the prices at which they would be, and at which they are usually and customarily, sold to the public by the respondents or by those who purchase them from the respondents for resale.

Respondent Crown Laboratories, Inc., employing Rex Merchandise Corporation of America as its selling agent, sold Pine Tree Shaving Cream with a resale retail price of 75 cents marked on the individual tubes and cartons of the product. Sportsman Brushless Shaving Cream, manufactured from substantially the same formula as the Pine Tree Shaving Cream, also bore a resale retail price of 75 cents marked on its tubes and cartons. Crown Laboratories charged Rex Merchandise Corporation of America, its selling agent, $8 or $9 a gross for each of said products, or packages were and are regularly and customarily resold by retailers to the members of the purchasing public variously at from 10 to 29 cents each.

PAR. 6. All of the respondents, acting together with a common understanding, are engaged in the sale and distribution of the various shaving creams, tooth pastes and other toilet articles with the full knowledge that the above referred to prices, so marked on the tubes and cartons thereof, were and are false and fictitious and did not and do not truthfully represent the prices at which said products are regularly and customarily sold to the consuming public. The aforesaid false and misleading representations on the part of respondents, acting together in a common understanding as aforesaid, have had and now have the tendency and capacity to mislead and deceive the purchasing public, and have misled and do mislead them into the

erroneous belief that said representations are true, and into the belief that the said fictitious prices were and are the regular and usual retail prices at which said products are customarily sold. Acting under the mistaken and erroneous belief induced by the false and misleading representations herein referred to, the public has purchased a substantial volume of respondents' products, with the result that trade in commerce between and among the several States of the United States and in the District of Columbia has been and is unfairly diverted to respondents from their competitors who truthfully represent their products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of respondents Sheray, Inc., Wilshire Sales Corporation, William Scher and Anna Scher, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before Edward E. Reardon, a trial examiner of the Commission theretofore duly designated by it, the report of the trial examiner thereon and brief filed on behalf of the Commission, and the Commission having made its findings as to the facts and its conclusion that all of the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents Rex Merchandise Corporation of America, Crown Laboratories, Inc., Sheray, Inc., and Wilshire Sales Corporation, corporations, their officers, directors, representatives, agents, and employees; Peter Meyer, individually and as an officer of Rex Merchandise Corporation of America; Arthur A. J. Weglein, Alexander Hirschbein and Frances Chorba, individually and as officers of Crown Laboratories, Inc.; William Scher and Anna Scher, individually and as officers of Sheray, Inc., and Wilshire Sales Corporation, their representatives, agents, and employees, directly or indirectly, through any corporate or other device, in connection with the offering for sale, sale and distribution of shaving creams, tooth pastes and other toiletries or cosmetics, or other merchandise, in commerce

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

1. Representing, through fictitious prices marked or stamped on, or affixed to, said products, or on the containers thereof, or through any other means or device, or in any manner, that said prices so marked, stamped or affixed are the regular or customary retail prices for such products.

2. Representing as the customary or regular retail prices for such products prices which are in fact fictitious and greatly in excess of the prices at which said products are regularly offered for sale and sold at retail.

It is further ordered, That this proceeding, insofar as it relates to respondent Wyette Meyer, be and the same is hereby closed.

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

GORDON-GORDON, LTD., AND PRINCESS PAT, LTD.

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

Docket 3793. Complaint, May 22, 1939—Decision, May 16, 1941

Where two corporations, owned, managed, operated, and controlled by husband and wife, and respectively engaged as a manufacturer and selling agent, in competitive interstate sale and distribution of their "Princess Pat" line of cosmetics; by means of circulars, labels, and other printed and written matter distributed among prospective customers, and by radio broadcasts:

(*a*) Represented that face powders containing orris root clogged the pores of the skin and irritated and roughened it, and that use of their "Princess Pat Powder" smoothed the skin, prevented coarse pores and blackheads, made and kept the skin smooth, soft, and pliant, and that their said powder was nonallergic to all persons; facts being that orris root, as an ingredient in face powder, has no clogging effect upon the pores, face powder containing it does not generally cause irritation or skin roughness, though having a tendency to do so in a small proportion of persons allergic to said root (employed by only about 10 percent of face powder manufacturers); their said "Princess Pat Powder" would not accomplish the results claimed therefor for reasons below set forth with respect to their other products; almond base thereof would have no beneficial effect upon the skin other than that of a mild astringent in the case of an oily skin; and their said powder was not nonallergic to all persons;

(*b*) Represented that use of their "Muscle Oil" would prevent crow's feet, wrinkles, and sagging facial muscles, and that it would penetrate beneath the surface of the skin and beneficially affect underlying facial muscles; facts being it would not accomplish said results, nor penetrate the skin sufficiently to benefit the underlying muscles, since types of oils used in said product are not absorbed through the skin to any appreciable extent and facial muscles are nourished by the blood, and wrinkles and sagging facial muscles are due, among other things, to shrinking of the skin, and diminution in muscular vigor and later life and to occupational concentration, under which conditions said preparation would have no beneficial effect;

(*c*) Represented that their "Skin Cleanser" would penetrate the skin and prevent coarse pores, pimples, blackheads, bad complexions, rough skin texture, and skin eruptions; facts being that it would not thus penetrate, or prevent coarse pores, pimples, etc.; cleansers, greases, and soaps will not penetrate the skin, although to the extent of aiding in removal of dead cells on surfaces thereof they will possibly prevent roughness; and a skin cleanser has no beneficial effect upon a rough skin produced by faulty nutrition or disease; and

(*d*) Represented that their "Skin Food Cream" or "Anti-Wrinkle Cream" would nourish the skin, was a tonic for the underlying nerves, and smoothed out and prevented lines and wrinkles; facts being nutrition for the skin is taken from the blood that circulates through it, and not from substances that may be rubbed thereon; said preparation had no effect whatsoever upon the

underlying nerves and, for reasons above stated with respect to said "Muscle Oil," would not prevent lines and wrinkles in the skin;

With tendency and capacity, through inclusion of word "Food" in former product, to mislead and deceive purchasers into the mistaken belief that it actually served as a food for and nourished the skin, and with capacity and tendency, through aforesaid various false and misleading representations, to mislead and deceive members of the purchasing public into the erroneous belief that such representations were true, and into purchase of substantial quantities of said products because of such belief, with result that trade was diverted unfairly to them from their competitors in commerce who do not misrepresent 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 in commerce.

Before *Mr. Randolph Preston*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. M. Manning Marcus, 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 Gordon-Gordon, Ltd., a corporation, and Princess Pat, Ltd., a corporation hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondents, Gordon-Gordon, Ltd., and Princess Pat, Ltd., are corporations organized and existing under and by virtue of the laws of the State of Illinois and having their office and principal place of business in the city of Chicago, State of Illinois. Respondent, Princess Pat, Ltd., is a subsidiary of and is owned and controlled by respondent, Gordon-Gordon, Ltd. Respondent, Gordon-Gordon, Ltd., directs and controls the sales policy and other activities of respondent, Princess Pat, Ltd., with respect to the acts and practices of said respondent described herein.

Respondent, Gordon-Gordon, Ltd., is now and has been for several years last past engaged in the business of manufacturing and compounding a line of cosmetics collectively designated as Princess Pat, among which are the cosmetics designated "Princess Pat Powder," "Muscle Oil," "Skin Cleanser," and "Skin Food Cream" or "Anti-Wrinkle Cream." Respondent, Gordon-Gordon, Ltd., sells and dis-

tributes said cosmetics through and by means of respondent, Princess Pat, Ltd.

Respondent, Princess Pat, Ltd., is now and has been for several years last past engaged in the business of selling and distributing said cosmetics to dealers, jobbers, and other purchasers thereof. Said respondent causes said products, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof at their respective points of location in various States of the United States, other than in 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 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 respondents are, and have been during all the times mentioned herein, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of cosmetics in commerce among and between the various States of the United States and in the District of Columbia. Among said competitors of respondents are many who do not misrepresent the quality and effectiveness in use of their respective products.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said products, by United States mail, by insertion in newspapers and periodicals having a general circulation and also in circulars or 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 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 their said products; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said products in

commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of, the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

1. As to "Princess Pat Powder"—

Have you heard how orris root and other pore-clogging ingredients can irritate the skin, and produce unsightly roughness? Perhaps you think you are in no danger from such powder—listen! If you don't have a chemical analysis of the powder you now use—change to Princess Pat, which is guaranteed pure—guaranteed to be entirely free from any harmful ingredients. It is the only powder with an almond base. And—almond, you know—has been proved a beautifier since long before Cleopatra upset men's hearts and destinies.

Constant contact of almond keeps the skin soft and pliant, creating lasting beauty while it adorns.

You will enjoy this truly different powder. Its exquisite smoothness and unusual cleansing quality are due to the almond base—A Princess Pat secret formula. Almond smooths and refines the skin, prevents coarse pores. This powder is non-allergic.

This will introduce the only powder with an almond base. Almond base keeps the skin from coarse pores and blackheads.

2. As to respondent's preparation "Muscle Oil"—

Soft, rounded chins; firm, beautiful throats; lovely facial contours; these depend upon the supporting muscle structure. Deep beneath the surface lies the cause * * * deep must be the treatment.

Madam reasons—knows that aid for the underlying muscle structure must go deep. Penetration indeed must be the effect that makes firm, tired, drooping muscles. Reasoning thus, Madam inevitably selects the only muscle oil that is Double Strength—Princess Pat.

Princess Pat Irradiated Muscle Oil (contains Vitamin D) for crow's feet, wrinkles, sagging.

3. As to respondents' preparation "Skin Cleanser"—

And Princess Pat has made the most important contributions to practical results in keeping the skin beautiful and youthful. One of the most important is our Skin Cleanser which removes pore film. You will find it a most delightful cream—one that seems actually to melt from the pores all dust, dirt and waste accumulations. It gets down beneath the surface of the pores. It removes all the dirt that has settled in from the outside and all the waste that is trying to force its way out from the inside. When perspiration and the oil from the sebaceous glands intermingle and decompose, there is formed upon the skin a fatty acid which, if neglected, makes all sorts of skin troubles—coarse pores, pimples, blackheads, and generally bad complexion. Princess Pat Skin Cleanser is a gentle solution which neutralizes the fatty acid, thus removing the cause of such ills. Pore film is a glaze of fatty acid. Pore film chokes and seals the pores * * * suffocates the skin. Princess Pat Skin Cleanser, by dissolving pore film has freer access to the pores. It cleanses to the depth of the pores, frees skin completely of all dust, dirt and pore waste.

4. As for respondents' preparation "Skin Food Cream" or "Anti-Wrinkle Cream"—

Nourishing cream? Assuredly. Madam's skin suffers daily theft of natural oils which are essential to beauty. Ardent sun, reckless winds, changing temperatures, nervous strain, worry * * * all take toll.

Madame can meet this situation by giving back to the skin that which is taken from it * * * just do so or betray yourself in time * * * suffering loss of skin pliancy, premature wrinkles and rough, muddy sagging skin.

The cream is a veritable caress to the skin * * * an exquisite relaxation for the drawn outer issues * * * a marvelous tonic for underlying nerves and cushioning structure cells.

By the means and in the manner aforesaid, the respondents represent directly and by implication that face powders containing orris root and other ingredients different from the ingredients contained in the respondents' Princess Pat Powder cause the pores of the skin to clog, irritate the skin and cause skin roughness; that almond is beneficial to the skin, smooths the skin and prevents coarse pores; that the use of respondents' said powder keeps the skin soft and pliant, prevents coarse pores and blackheads and soothes and protects the skin; and that said powder is non-allergic to all persons.

By the means and in the manner aforesaid, respondents represent that the use of their preparation designated "Muscle Oil" will prevent crow's feet, wrinkles and sagging facial muscles and that such preparation will penetrate beneath the surface of the skin and beneficially affect the underlying facial muscles.

By the means and in the manner aforesaid respondents represent that their said preparation designated "Skin Cleanser" will penetrate beneath the surface of the skin and the use of such preparation will prevent coarse pores, pimples, blackheads, bad complexions, rough skin texture, and skin eruptions.

By the means and in the manner aforesaid and by means of the use of the terms designating such preparation, respondents represent that their preparation designated "Skin Food Cream" or "Anti-Wrinkle Cream" nourishes and feeds the skin, is a tonic for the underlying nerves and smooths out and prevents lines and wrinkles.

PAR. 4. The aforesaid statements and representations by the respondents, used and disseminated in the manner above described, are grossly exaggerated, misleading, and untrue. In truth and in fact, face powder made of orris root, and other ingredients, does not clog the pore openings of the skin to which such powders are applied as to cause irritation or roughness of the skin. The application of almond to the skin has no beneficial effect on the skin. The use of respondents' "Princess Pat Powder" will not keep the skin soft and

pliant or prevent coarse pores and blackheads. The preparation "Princess Pat Powder" is not non-allergic to all persons. The use of respondents' said powder will not soothe or protect the skin.

The use of said "Muscle Oil" will not prevent crow's feet, wrinkles, or sagging facial muscles. Such preparation will not penetrate beneath the surface of the skin and will not beneficially affect the underlying facial muscles.

The said "Skin Cleanser" will not penetrate beneath the surface of the skin. The use of said preparation will not prevent coarse pores, pimples, blackheads, bad complexions, rough skin texture, or skin eruptions.

The use of said "Skin Food Cream" or "Anti-Wrinkle Cream" does not nourish or feed the skin, is not a tonic for the underlying nerves, and will not smooth out or prevent lines or wrinkles.

PAR. 5. The use by the respondents of the aforesaid false and misleading statements and representations disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive members of the purchasing public, situated in various States of the United States and in the District of Columbia, into the erroneous and mistaken belief that the aforesaid statements and representations are and were true and into the purchase of substantial quantities of respondents' said products because of said erroneous and mistaken belief. As a result thereof trade has been diverted unfairly to the respondents from their said competitors in commerce among and between the various States of the United States and in the District of Columbia who do not misrepresent the quality and effectiveness in use of their respective products. In consequence thereof, injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 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 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 22d day of May 1939, issued and thereafter served its complaint in this proceeding upon the respondents Gordon-Gordon, Ltd., and Princess Pat, Ltd., charging them

with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by R. P. Bellinger, attorney for the Commission, and in opposition to the allegations of the complaint by M. M. Marcus, attorney for the respondents, before Randolph Preston, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly filed in the office of the Commission. Thereafter the proceeding came regularly on for final disposition by 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 Gordon-Gordon, Ltd., and Princess Pat, Ltd., are corporations organized and existing under and by virtue of the laws of the State of Illinois, having their principal office and place of business at 2709 South Wells Street, in the city of Chicago, State of Illinois. Respondent Princess Pat, Ltd., is the selling agent of respondent Gordon-Gordon, Ltd., and both of said respondent corporations are owned, managed, operated, and controlled by M. Martin Gordon and Patricia Gordon, husband and wife, who together dominate and direct the sales policies and other activities of both respondents in respect to the acts and practices thereof.

Respondent Gordon-Gordon, Ltd., is now, and has been for several years last past, engaged in the business of manufacturing a line of cosmetics designated "Princess Pat," among which are the cosmetics "Princess Pat Powder," "Muscle Oil," or "Princess Pat Irradiated Muscle Oil," "Skin Cleanser," and "Skin Food Cream" or "Anti-Wrinkle Cream."

Respondent Princess Pat, Ltd., is now, and has been for several years last past, the selling agent for respondent Gordon-Gordon, Ltd., engaged in the business of selling and distributing said cosmetics, as aforesaid, to jobbers and other dealers. Said respondent causes said products, when sold, to be transported from its 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 herein mentioned have maintained, a course of trade in said products in commerce between and among various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of their business said respondents are, and have been at all times mentioned herein, in substantial competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution of cosmetics in commerce among and between the various States of the United States and in the District of Columbia. Among the said competitors of respondents are many who do not misrepresent the quality and effectiveness of their respective products.

PAR. 3. In the course and conduct of their aforesaid businesses and for the purpose of inducing the purchase of their said products in commerce, the respondents, acting in conjunction and cooperation with each other, have made many statements and representations concerning the quality and effectiveness of their aforesaid products and the harmful effect of certain products sold by their competitors, by means of circulars, labels, and other printed and written matter distributed among prospective customers and by means of radio broadcasts. Among and typical of such statements and representations so disseminated are the following:

Statements and representations with respect to "Princess Pat Powder":

Have you heard how orris root and other pore-clogging ingredients can irritate the skin and produce unsightly roughness? Perhaps you think you are in no danger from such powder—Listen! If you don't have a chemical analysis of the powder you now use—change to Princess Pat, which is guaranteed pure—guaranteed to be entirely free from any harmful ingredients. It is the only powder with an almond base. And almond, you know—has been proved a beautifier since long before Cleopatra upset men's hearts and destinies.

Constant contact of almond keeps the skin soft and pliant, creating lasting beauty while it adorns.

You will enjoy this truly different powder. Its exquisite smoothness and unusual cleansing quality are due to the almond base—A Princess Pat secret formula. Almond smooths and refines the skin, prevents coarse pores. This power is non-allergic.

This will introduce the only powder with an almond base. Almond base keeps the skin from coarse pores and blackheads.

Statements and representations with respect to respondent's product "Muscle Oil":

Soft rounded chins; firm, beautiful throats; lovely facial contours; these depend upon the supporting muscle structure. Deep beneath the surface lies the cause * * * deep must be the treatment.

Madam reasons—knows that aid for the underlying muscle structure must go deep. Penetration indeed must be the effect that makes firm, tired, drooping muscles. Reasoning thus, Madam inevitably selects the only muscle oil that is double strength—Princess Pat.

Princess Pat Irradiated Muscle Oil (Contains Vitamin D) for crow's feet, wrinkles, sagging.

Statements and representations with respect to respondent's product "Skin Cleanser":

And Princess Pat has made the most important contributions to practical results in keeping the skin beautiful and youthful. One of the most important is our Skin Cleanser, which removes pore film. You will find it a most delightful cream—one that seems actually to melt from the pores all dust, dirt and waste accumulations. It gets down beneath the surface of the pores. It removes all the dirt that has settled in from the outside and all the waste that is trying to force its way out from the inside. When perspiration and the oil from the sebaceous glands intermingle and decompose, there is formed upon the skin a fatty acid which, if neglected, makes all sorts of skin trouble—coarse pores, pimples, blackheads and generally bad complexion. Princess Pat Skin Cleanser is a gentle solution which neutralizes the fatty acid, thus removing the cause of such ills. Pore film is a glaze of fatty acid. Pore film chokes and seals the pores * * * suffocates the skin. Princess Pat Skin Cleanser, by dissolving pore film, has free access to the pores. It cleanses to the depths of the pores, frees skin completely of all dust, dirt and pore waste.

Statements and representations with respect to the respondents' product "Skin Food Cream" or "Anti-Wrinkle Cream":

Nourishing cream? Assuredly. Madam's skin suffers daily theft of natural oils which are essential to beauty. Ardent sun, reckless winds, changing temperatures, nervous strain, worry * * * all take toll.

Madame can meet this situation by giving back to the skin that which is taken from it * * * just do so or betray yourself in time * * * suffering loss of skin pliancy, premature wrinkles and rough, muddy sagging skin.

The cream is a veritable caress to the skin * * * and exquisite relaxation for the drawn outer tissues * * * a marvelous tonic for underlying nerves and cushioning structure cells.

PAR. 4. Through the use of the above statements and representations, all of which purport to be descriptive of the quality and effectiveness of their said cosmetics and the harmful effects of certain ingredients used in face powder by their competitors, the respondents represent that the use of face powders containing orris root causes the pores of the skin to clog, irritates the skin and causes skin roughness; that the use of respondents' "Princess Pat Powder" smoothes the skin, prevents coarse pores and blackheads, makes and keeps the skin smooth, soft, and pliant and that respondents' powder is non-allergic to all persons.

Through the use of the above statements and representations respecting the preparation "Muscle Oil" respondents represent that the use of said preparations will prevent crow's feet, wrinkles, and sagging facial muscles and that such preparation will penetrate beneath the surface of the skin and beneficially affect the underlying facial muscles.

Through the use of the above statements and representations with reference to the preparation "Skin Cleanser" the respondents represent that said preparation will penetrate beneath the surface of the skin and use thereof will prevent coarse pores, pimples, blackheads, bad complexions, rough skin texture, and skin eruptions.

Through the use of the above statements and representations with respect to the preparation "Skin Food Cream" or "Anti-Wrinkle Cream" the respondents represent that said preparation will nourish the skin, is a tonic for the underlying nerves, and smoothes out and prevents lines and wrinkles.

PAR. 5. The evidence shows that respondents' "Princess Pat Powder" contains almond powder, stearate of zinc, oxide of zinc, and talc; that respondents' "Muscle Oil" consists of a mixture of vegetable oils, such as almond oil, peanut oil, and olive oil with an unknown Vitamin D content; that respondents' "Skin Cleanser" is composed largely of beeswax, mineral oil, and ozokerite wax; that respondents' "Skin Food Cream" or "Anti-Wrinkle Cream" is composed largely of beeswax, mineral oil, ozokerite wax, and lanolin.

PAR. 6. The evidence shows, and the Commission finds, that there are two kinds of pores in the skin, sweat pores and sebaceous pores. Orris root as an ingredient in face powder has no clogging effect upon the sweat pores, as the secretory pressure from within is always sufficient to cause the flow of sweat. Oily secretions come from the sebaceous pores. The secretion of this oily substance is much slower than that through the sweat pores, but there is no indication that orris root will clog the sebaceous pores. Face powder containing orris root does not generally cause irritation or skin roughness. Some persons are allergic to orris root and the use of face powder containing this substance by such persons would tend to cause irritation of the skin and a consequent roughness thereof. Tests have shown that from 10 percent to 24 percent of the persons tested might be so affected. At the time of the hearing in this case, only about 10 percent of face powder manufacturers used orris root as an ingredient. Respondents' face powder will not smooth the skin, prevent coarse pores and blackheads, nor will it keep the skin soft and pliant for the same reasons hereinafter set forth respecting re-

spondents' other products. The almond base for respondents' powder has no beneficial effect upon the skin other than that of a mild astringent in the case of an oily skin. Respondents' face powder is not nonallergic to all persons.

The evidence shows, and the Commission finds, that respondents' preparation "Muscle Oil" will not prevent crows' feet, wrinkles, and sagging muscles and will not penetrate beneath the surface of the skin to the extent that the use thereof will beneficially affect the underlying muscles. The types of oils used in this product are not absorbed through the skin to any appreciable extent. The facial muscles are nourished by the blood, and any substance that might penetrate through the skin would not reach the muscles but would be absorbed in the blood and subsequently digested. Wrinkles and sagging facial muscles are caused in several ways: the stretching of the skin at the height of the physical and mental efficiency and a subsequent shrinking in later life; the diminution in modular muscular vigor caused by aging and lack of exercise sometimes exaggerated by disease; and by occupational concentration. Respondents' preparation has no beneficial effect under such conditions.

The evidence shows, and the Commission finds, that respondents' "Skin Cleanser" will not penetrate the surface of the skin or prevent coarse pores, pimples, blackheads, bad complexions, rough skin texture, and skin irritations. Cleansers, greases, and soaps that are put on and rubbed off the skin will not penetrate into or under the skin. They will aid in the removal of dead cells on the surface of the skin, and to that extent might prevent roughness of the skin, but to no greater extent than the ordinary use of soap and towel. Rough skin is produced by faulty nutrition or disease, such as a disturbance of the thyroid gland. A skin cleanser has no beneficial effect under such conditions.

The evidence shows, and the Commission finds, that respondents' "Skin Food Cream" or "Anti-Wrinkle Cream" will not nourish the skin, is not a tonic for the underlying nerves, and will not smooth out and prevent lines and wrinkles in the skin. Nutrition for the skin is taken from the blood that circulates through the skin and not from substances that may be rubbed on the skin. Such preparation has no effect whatsoever upon the underlying nerves, and for the reasons already stated with respect to respondents' Muscle Oil this preparation would not prevent lines and wrinkles in the skin.

Respondents' use of the name "Skin Food Cream" for one of its products, by reason of the inclusion of the word "Food" in such name, has the tendency and capacity to mislead and deceive purchasers

into the mistaken belief that such product actually serves as a food for and nourishes the skin.

PAR. 7. The use by the respondents of the aforesaid false and misleading statements and representations disseminated as aforesaid has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid statements and representations are and were true and into the purchase of substantial quantities of respondents' said products because of such erroneous and mistaken belief. As a result thereof trade has been diverted unfairly to the respondents from their said competitors in commerce among and between the various States of the United States who do not misrepresent the quality and effectiveness of their respective products.

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 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 arguments by R. P. Bellinger, counsel for the Commission, and by M. Manning Marcus, 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, Gordon-Gordon, Ltd., a corporation, and Princess Pat, Ltd., a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their face powder designated "Princess Pat Powder," their preparation variously designated "Muscle Oil" and "Princess Pat Irradiated Muscle Oil," their preparation designated "Skin Cleanser" and the preparation designated "Skin Food Cream" or "Anti-wrinkle Cream," or any products of substantially similar compositions or possessing

substantially similar properties, whether sold under the same names or under any other names, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That orris root as an ingredient in face powder will clog the pores of the skin or will cause skin irritation and roughness unless such representations are limited to those cases in which the user is allergic to orris root.

2. That "Princess Pat Powder" is nonallergic to all persons; that the application of said powder to the skin will smooth the skin, or make the skin soft or pliant, or that it will prevent coarse pores and blackheads.

3. That the use of respondents' preparation designated as "Muscle Oil" and "Princess Pat Irradiated Muscle Oil," will prevent crow's feet, wrinkles, or sagging facial muscles or that said preparation will penetrate beneath the surface of the skin and beneficially affect the underlying facial muscles.

4. That respondents' preparation "Skin Cleanser" will penetrate beneath the surface of the skin, or that its use will prevent coarse pores, pimples, blackheads, bad complexions, skin eruptions, or rough skin texture.

5. That respondents' preparation "Skin Food Cream" or "Anti-wrinkle Cream," will nourish or feed the skin; or that said preparation is a tonic for the underlying nerves or will smooth out or prevent lines or wrinkles.

6. Using any designation for its product formerly known as "Skin Food Cream" and as "Anti-wrinkle Cream" which includes the word "Food."

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

COLONIAL DRUG COMPANY, AND M. A. YOUNKMAN

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

Docket 4260. Complaint, Jan. 24, 1941 [1]*—Decision, May 16, 1941*

Where a corporation and its president, who managed and controlled its activities with reference to the practices below set forth, engaged in interstate sale and distribution of their "Natural Mineral Extract" medicinal preparation, as an external and internal treatment for various diseases, ailments, and disorders; by means of advertisements disseminated through the mails and otherwise—

(*a*) Represented, directly and by implication, that external application of said Extract constituted a cure or remedy and competent and effective treatment for eczema, acne, athlete's foot and other skin conditions, burns, colds, cuts, scratches, old sores, cold sores, sore swollen feet, infections, sore throat, tonsillitis, bleeding gums, fever blisters, enlarged prostate glands, hemorrhoids, and insect bites or stings;

(*b*) Represented that internal use thereof would purify the blood, constituted a tonic for rundown anemic conditions, supplied minerals essential to bodily health or vigor, and constituted a cure or remedy for indigestion, stomach and intestinal disorders, ulceration of the stomach, kidney and bladder disorders, high and low blood pressure, rheumatism, liver trouble, coughs, emaciation, boils, carbuncles, and other rundown conditions of the blood, and a competent and effective treatment therefor; and

(*c*) Represented that said preparation had germicidal, antiseptic and astringent properties, was beneficial in treatment of female disorders, and was a competent and effective treatment for ill-nourished, backward, and defective children;

Facts being it had no therapeutic value other than that of a mild laxative and mild diuretic, had no germicidal, antiseptic, or astringent properties, used externally or internally it was of no value in the treatment of the diseases and ailments listed, and it was not a tonic or blood purifier;

With the effect of misleading and deceiving substantial portion of purchasing public into the erroneous belief that such advertisements were true, and of inducing it, because of such belief, to purchase said medicinal product:

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

Mr. Donovan R. Divet for the Commission.

Mr. E. D. Brewer, of Tulsa, Okla., for respondents.

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[1] Amended.

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 Colonial Drug Co., a corporation, and M. A. Younkman, individually, as President of Colonial Drug Co., and trading as Colonial Sales Co., hereinafter referred to as respondents, have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint stating its charges in that respect as follows:

Paragraph 1. The respondent Colonial Drug Co. is a corporation organized and existing under and by virtue of the laws of the State of Oklahoma and having its office and principal place of business at Boston Avenue and First Street in the city of Tulsa, State of Oklahoma. Respondent M. A. Younkman is an individual trading and doing business as Colonial Sales Co. and having his office and principal place of business at 21 East First Street in the city of Tulsa, State of Oklahoma, and is and at all times mentioned in this amended complaint has been the president of said respondent corporation, Colonial Drug Co., and as such president manages, controls, and directs and at all times herein mentioned has managed, controlled, and directed the corporate affairs and activities of said respondent corporation Colonial Drug Co. with reference to the acts and practices herein alleged.

Par. 2. The respondent M. A. Younkman, individually and trading as Colonial Sales Co. and acting in cooperation and conjunction with, and through the medium of said Colonial Drug Co., a corporation, is now and for more than two years last past has been engaged in the preparation and in the sale and distribution of a certain medicinal product containing drugs, known as National Mineral Extract. The said respondent Colonial Drug Co., a corporation, is now and for more than 2 years last past has been engaged in the business of offering for sale and selling the said medicinal product, Natural Mineral Extract, to individual members of the purchasing public. Said medicinal product is sold and offered for sale by both respondents as an internal and external treatment for various diseases, ailments, and disorders of the human body.

In the course and conduct of their business, the respondents cause the said medicinal product, when sold, to be transported from their places of business in the State of Oklahoma to purchasers thereof located in various other States of the United States. Respondents

maintain and at all times mentioned herein have maintained a course of trade in said medicinal product 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 their aforesaid businesses respondents have disseminated and have caused the dissemination of false advertisements concerning the said product by United States mails and by various other means in commerce as commerce is defined in the Federal Trade Commission Act; and the respondents have also disseminated and have caused the dissemination of false advertisements concerning the said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the 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 and by other means are the following:

Natural Mineral Extract has been used by thousands and found highly beneficial when taken internally as a tonic for run-down anemic conditions wherein the blood needs enrichment, and the system needs toning up to renew strength and vigor. It has been found highly beneficial when taken internally for indigestion, stomach and intestinal disorders, ulceration of the stomach, kidney and bladder disorders, high-blood pressure, rheumatism, and many other run-down conditions of the blood.

Natural Mineral Extract has been found highly beneficial when used externally for superficial burns, scalds, small cuts and scratches, eczema, and other skin conditions, sore throat, tonsillitis, bleeding gums, fever blisters, athletes foot, enlarged prostate glands of old and middle-aged men, internal hemorrhoids, bleeding piles or hemorrhoids, insect bites or stings, and many other external uses, wherein a healing astringent is needed.

Female Trouble—Many women are high in their praise of Natural Mineral Extract when used as directed in a douche, when an astringent is needed. For female troubles, use one tablespoon to one quart lukewarm warm water, once daily.

An effective, non-poisonous germicide.

Natural Mineral Extract contains most of the sixteen minerals that are necessary in repairing and rebuilding body cells and giving new life to weakened and general run-down conditions of the system.

Diseased conditions in which Natural Mineral Extracts have been found useful: anemia, run-down condition, acne, eczema, bed-wetting, getting up nights, bleeding, blood pressure, high and low, blood poor, impoverished thin, boils, burns, carbuncles, chilblains, children defective—ill nourished—backward, cold sores, fever blisters, convalescence, cough, sore swoolen feet, hemorrhoids (commonly called piles), infections, old sores, insect bites, kidneys, liver, female trouble, stomach trouble, indigestion, alkaline stomach, ulcers, worms, wound cuts, bruises and rheumatism.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of the said product, respondents have represented, directly and by implication, that the external application of the said preparation Natural Mineral Extract constitutes a cure or remedy for eczema, acne, athlete's foot, and other skin conditions, burns, scalds, cuts, scratches, old sores, cold sores, sore swollen feet, infections, sore throat, tonsilitis, bleeding gums, fever blisters, enlarged prostate glands, hemorrhoids and insect bites or stings, and constitutes a competent and effective treatment for such conditions. In like manner the respondents have represented that the internal use of said preparation will purify the blood and constitutes a tonic for run-down anemic conditions and supplies minerals essential to bodily health, vigor, or energy, and constitutes a cure or remedy for indigestion, stomach and intestinal disorders, ulceration of the stomach, kidney and bladder disorders, high and low blood pressure, rheumatism, liver trouble, coughs, emaciation, boils, carbuncles and other run-down conditions of the blood, and is a competent and effective treatment for such disorders. In like manner the respondents have also represented that said preparation has germicidal, antiseptic, and astringent properties and is beneficial in the treatment of female disorders, and that said preparation is a competent and effective treatment for ill-nourished, backward and defective children.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading, and untrue. In truth and in fact the said preparation has no therapeutic value other than that of a mild laxative or mild diuretic. Said preparation has no germicidal, antiseptic, or astringent properties and the external application of such preparation is of no value in the treatment of eczema, acne, athlete's foot, skin diseases, burns, scalds, cuts, scratches, old sores, cold sores, swollen feet, infection, sore throat, tonsilitis, bleeding gums, fever blisters, enlarged prostate glands or hemorrhoids, either external or internal. Respondents' preparation has no therapeutic value in the treatment of indigestion, stomach or intestinal disorders, ulceration of the stomach, kidney or bladder disorders, rheumatism, liver trouble, coughs, emaciation, boils, carbuncles, or other run-down conditions of the blood, and does not constitute a cure or remedy for or a competent treatment of such diseases and disorders. Said preparation is not a tonic or blood purifier and will have no therapeutic effect

upon run-down conditions of the blood. The said preparation has no therapeutic value in the treatment of female disorders and has no therapeutic properties which would constitute a competent or effective treatment of ill-nourished, backward, or defective children.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to the said product disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the said medicinal product.

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 January 24, 1941, issued and thereafter served its amended complaint on the respondents, Colonial Drug Co., a corporation, and M. A. Younkman, individually, and as President of Colonial Drug Co., and trading as Colonial 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 and the filing of respondents' answer thereto, the Commission, by order entered herein, granted respondents' motion for permission to withdraw their said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said amended complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said amended complaint and substitute answer, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Colonial Drug Co. is a corporation organized and existing under and by virtue of the laws of the State of

Oklahoma, and having its office and principal place of business at Boston Avenue and First Street in the city of Tulsa, State of Oklahoma. Respondent M. A. Younkman is an individual trading and doing business as Colonial Sales Co. and having his office and principal place of business at 21 East First Street in the city of Tulsa, State of Oklahoma, and is now and at all times mentioned herein has been the president of said respondent corporation, Colonial Drug Co., and as such president he manages, controls, and directs, and at all times herein mentioned has managed, controlled, and directed, the corporate affairs and activities of said respondent corporation Colonial Drug Co. with reference to the acts and practices herein found.

PAR. 2. The respondent M. A. Younkman, individually and trading as Colonial Sales Co. and acting in cooperation and conjunction with, and through the medium of said Colonial Drug Co., a corporation, is now and for more than 2 years last past has been engaged in the preparation and in the sale and distribution of a certain medicinal product containing drugs, known as Natural Mineral Extract. The said respondent Colonial Drug Co., a corporation, is now and for more than 2 years last past has been engaged in the business of offering for sale and selling the said medicinal product, Natural Mineral Extract, to individual members of the purchasing public. Said medicinal product is sold and offered for sale by both respondents as an internal and external treatment for various diseases, ailments, and disorders of the human body.

In the course and conduct of their business, the respondents cause the said medicinal product, when sold, to be transported from their places of business in the State of Oklahoma to purchasers thereof located in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in said medicinal product 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 their aforesaid businesses respondents have disseminated and have caused the dissemination of false advertisements concerning the said product by United States mails and by various other means in commerce as commerce is defined in the Federal Trade Commission Act; and the respondents have also disseminated and have caused the dissemination of false advertisements concerning the said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the 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 and by other means are the following:

Natural Mineral Extract has been used by thousands and found highly beneficial when taken internally as a tonic for run-down anemic conditions wherein the blood needs enrichment, and the system needs toning up to renew strength and vigor. It has been found highly beneficial when taken internally for indigestion, stomach and intestinal disorders, ulceration of the stomach, kidney and bladder disorders, high blood pressure, rheumatism, and many other run-down conditions of the blood.

Natural Mineral Extract has been found highly beneficial when used externally for superficial burns, scalds, small cuts and scratches, eczema, and other skin conditions, sore throat, tonsilitis, bleeding gums, fever blisters, athletes foot, enlarged prostate glands of old and middle aged men, internal hemorrhoids, bleeding piles or hemorrhoids, insect bites or stings, and many other external uses, wherein a healing astringent is needed.

Female Trouble—Many women are high in their praise of Natural Mineral Extract when used as directed in a douche, when an astringent is needed. For female troubles, use one tablespoon to one quart lukewarm water, once daily.

An effective, non-poisonous germicide.

Natural Mineral Extract contains most of the sixteen minerals that are necessary in repairing and rebuilding body cells and giving new life to weakened and general run-down conditions of the system.

Diseased conditions in which Natural Mineral Extracts have been found useful: anemia, rundown condition, acne, eczema, bed-wetting, getting up nights, bleeding, blood pressure, high and low. blood poor, impoverished thin, boils, burns, carbuncles, chilblains, children defective—ill nourished—backward, cold sores, fever blisters, convalescence, cough, sore swollen feet, hemorrhoids (commonly called piles), infections, old sores, insect bites, kidneys, liver, female trouble, stomach trouble, indigestion, alkaline stomach, ulcers, worms, wound cuts, bruises and rheumatism.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of the said product, respondents have represented, directly and by implication, that the external application of the said preparation Natural Mineral Extract constitutes a cure or remedy for eczema, acne, athlete's foot, and other skin conditions, burns, scalds, cuts, scratches, old sores, cold sores, sore swollen feet, infections, sore throat, tonsilitis, bleeding gums, fever blisters, enlarged prostate glands, hemorrhoids and insect bites or stings, and constitutes a competent and effective treatment for such conditions. In like manner the respondents have represented that the internal use

of said preparation will purify the blood and constitutes a tonic for rundown anemic conditions and supplies minerals essential to bodily health, vigor, or energy, and constitutes a cure or remedy for indigestion, stomach and intestinal disorders, ulceration of the stomach, kidney and bladder disorders, high and low blood pressure, rheumatism, liver trouble, coughs, emaciation, boils, carbuncles, and other rundown conditions of the blood, and is a competent and effective treatment for such disorders. In like manner the respondents have further represented that said preparation has germicidal, antiseptic, and astringent properties and is beneficial in the treatment of female disorders, and is a competent and effective treatment for ill nourished, backward, and defective children.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading, and untrue. In truth and in fact the said preparation has no therapeutic value other than that of a mild laxative or mild diuretic. Said preparation has no germicidal, antiseptic, or astringent properties and the external application of such preparation is of no value in the treatment of eczema, acne, athlete's foot, skin diseases, burns, scalds, cuts, scratches, old sores, cold sores, swollen feet, infection, sore throat, tonsilitis, bleeding gums, fever blisters, enlarged prostate glands or hemorrhoids, either external or internal. Respondents' preparation has no therapeutic value in the treatment of indigestion, stomach or intestinal disorders, ulceration of the stomach, kidney or bladder disorders, rheumatism, liver trouble, coughs, emaciation, boils, carbuncles, or other rundown conditions of the blood, and does not constitute a cure or remedy for or a competent treatment of such diseases and disorders. Said preparation is not a tonic or blood purifier and will have no therapeutic effect upon rundown conditions of the blood. The said preparation has no therapeutic value in the treatment of female disorders and has no therapeutic properties which would constitute a competent or effective treatment of ill nourished, backward, or defective children.

PAR. 6. The use by the respondents of the foregoing false, deceptive and misleading statements and representations with respect to the said product disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase the said medicinal 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 amended 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 respondents, Colonial Drug Co., a corporation, its officers, and M. A. Younkman, individually, and as president of Colonial Drug Co., and trading as Colonial Sales Co., or trading under any other name, respondents' representatives, agents, 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 "Natural Mineral Extract," or any preparation of substantially similar composition 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 advertisement represents, directly or through inference:

(*a*) that said preparation constitutes a cure or remedy for, or possesses any therapeutic value in the treatment of eczema, acne, athlete's foot, burns, scalds, cuts, scratches, old sores, cold sores, sore swollen feet, infections, sore throat, tonsilitis, bleeding gums, fever blisters, enlarged prostate gland, hemorrhoids, insect bites or stings, indigestion, stomach or intestinal disorders, ulceration of the stomach, kidney or bladder disorders, high or low blood pressure, rheumatism, liver trouble, coughs, emaciation, boils, or carbuncles.

(*b*) that said preparation possesses any germicidal, antiseptic, or astringent properties.

(*c*) that said preparation has any therapeutic value as a tonic or blood purifier, or that it has any therapeutic effect upon rundown conditions of the blood.

(*d*) that said preparation has any therapeutic value in the treatment of female disorders.

(*e*) that said preparation constitutes a competent or effective treatment for ill-nourished, backward, or defective children.

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.

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

MAX CAPLAN, DOING BUSINESS AS CAPITAL 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 4343. Complaint, Oct. 10, 1940—Decision, May 16, 1941

Where an individual engaged in interstate sale and distribution of a medicinal preparation designated "Mrs. Bee Femo Caps"; by means of advertisements disseminated through the mails and in newspapers and other advertising literature—

(*a*) Represented, directly and by implication, that his said preparation constituted a safe, competent, and effective treatment for delayed menstruation, that there was no risk in its use, and that it did not cause discomfort or inconvenience;

Facts being it was not a competent or effective treatment for said condition, was not safe or harmless in that it contained the drugs ergot, oil of tansy and aloin in quantities sufficient to cause gastro-intestinal disturbances, with pelvic congestion and hemorrhage, and in cases of pregnancy might result in uterine infection, blood poisoning, and other serious conditions, if used under the conditions prescribed in said advertisements or under such as are customary or usual; and

(*b*) Failed to reveal facts material in the light of such representations, and that use of said preparation might, as aforesaid, result in serious injury to health;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true, and, because of such mistaken belief, of inducing purchase by the 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.

Mr. A. J. Lubliner, of Bluefield, W. Va., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Max Caplan, an individual, trading and doing business as Capital Drug Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Max Caplan is an individual trading and doing business as Capital Drug Co., with his principal office and place of business located at 18 East Campbell Avenue, in the city of Roanoke, State of Virginia.

PAR. 2. Respondent, for some time past, has been engaged in the sale and distribution of a drug preparation designated as "Mrs. Bee Femo Caps."

Respondent caused his said preparation, when sold, to be transported from his place of business in the State of Virginia to purchasers thereof located in the various other 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 has caused the dissemination of, false advertisements concerning his said preparation by 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 has caused the dissemination of false advertisements concerning his said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, 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 other advertising literature, is the following:

MODERN WOMEN

Be safe! Use a Guaranteed Harmless Prescription.

Don't be alarmed or discouraged over delayed, unnatural suppressed periods.

A New Discovery, Mrs. Bee Femo Caps, the fast acting, safe aid to women. Acts without discomfort or inconvenience. Even in obstinate cases. SOLD ONLY BY CAPITAL DRUG COMPANY, 18 E. Campbell Avenue, Roanoke, Virginia.

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 "Mrs. Bee Femo Caps," constitutes a safe, competent, and effective treatment for delayed menstruation; that there is no risk in its use, and that it does not cause the user discomfort or inconvenience, and that it is harmless and effective in obstinate, unnatural, and suppressed cases of delayed menstruation.

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 "Mrs. Bee Femo Caps," is not a competent or effective treatment for delayed menstruation. Said preparation is not safe or harmless in that it contains the drugs, ergot, oil of tansy 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.

The 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 by pregnant women, 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.

The 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 may produce a gangrenous condition of the lower limbs, resulting in possible loss of limbs or 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 serious 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 preparation, disseminated as aforesaid, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations, and advertisements were true and that the preparation designated as "Mrs. Bee Femo Caps" is a safe, harmless, competent, and effective treatment for delayed menstruation and to induce purchase by the public of the respondent's said preparation, because of such erroneous and mistaken belief engendered as above set forth.

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 October 10, 1940, issued, and on October 11, 1940, served its complaint in this proceeding upon the respondent Max Caplan, an individual trading and doing business as Capital Drug 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 and service of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and substitute answer, and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Max Caplan is an individual trading and doing business as Capital Drug Co., with his principal office and place of business located at 18 East Campbell Avenue, in the city of Roanoke, State of Virginia.

PAR. 2. Respondent, for some time past, has been engaged in the sale and distribution of a drug preparation designated as "Mrs. Bee Femo Caps."

Respondent caused his said preparation, when sold, to be transported from his place of business in the State of Virginia to purchasers thereof located in the various other 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 has caused the dissemination of, false advertisements concerning his said preparation by 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 has caused the dissemination of false advertisements concerning his said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, 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 advertising in newspapers and other advertising literature, are the following:

MODERN WOMEN

Be safe! Use a Guaranteed Harmless Prescription.

Don't be alarmed or discouraged over delayed, unnatural suppressed periods.

A New Discovery, Mrs. Bee Femo Caps, the fast acting, safe aid to women. Acts without discomfort or inconvenience. Even in obstinate cases. SOLD ONLY BY CAPITAL DRUG COMPANY, 18 E. Campbell Avenue, Roanoke, Virginia.

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 "Mrs. Bee Femo Caps," constitutes a safe, competent, and effective treatment for delayed menstruation; that there is no risk in its use, and that it does not cause the user discomfort or inconvenience, and that it is harmless and effective in obstinate, unnatural, and suppressed cases of delayed menstruation.

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 "Mrs. Bee Femo Caps," is not a competent or effective treatment for delayed menstruation. Said preparation is not safe or harmless in that it contains the drugs, ergot, oil of tansy 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.

The 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 by pregnant women,

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.

The 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 may produce a gangrenous condition of the lower limbs, resulting in possible loss of limbs or 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 serious 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 preparation, disseminated as aforesaid, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations and advertisements were true and that the preparation designated as "Mrs. Bee Femo Caps" is a safe, harmless, competent and effective treatment for delayed menstruation and to induce purchase by the public of the 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 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Max Caplan, individually, and trading as Capital Drug 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 or distribution of his medicinal preparation known as "Mrs. Bee Femo Caps," or any other preparation of substantially similar composition 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 advertisement represents, directly or through inference, that said preparation is effective in obstinate, unnatural or suppressed cases of delayed menstruation or constitutes a competent or effective treatment for delayed menstruation; that said preparation does not cause the user any discomfort and that there is no risk involved in its use; or 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 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 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 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

THE BONITA COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 2263. Order, May 17, 1941

Modified order, pursuant to provisions of Section 5 (*i*) of Federal Trade Commission Act, in proceeding in question, in which (1) original order issued on June 21, 1935, 20 F. T. C. 454, prohibiting sale of candy by lottery schemes or devices; (2) Circuit Court of Appeals for the Seventh Circuit, on July 1, 1936, in *Federal Trade Commission* v. *A. McLean & Son, M. J. Holloway & Co., Queen Anne Candy Co. and The Bonita Co.*, 84 F. (2d) 910, 22 F. T. C. 1149, rendered its opinion and entered its decree modifying said order of the Commission in certain particulars and affirming the same in other particulars; and (3) on July 19, 1940, in *Federal Trade Commission* v. *The Bonita Co.*, 31 F. T. C. 1834,[1] modified its said decree—

Requiring respondent, its representatives, etc., in the manufacture, sale, and distribution in interstate commerce of candy and candy products, to forever cease and desist from (1) selling, etc., to jobbers, etc., for resale to retailers, candy so packed and assembled that sales thereof to the general public are to be made, or are designed to be made by means of a lottery, etc.; (2) supplying, etc., wholesalers, etc., with packages or assortments of candy which are used, or are designed to be used, without alteration or rearrangement of the contents, to conduct a lottery, etc., in sale or distribution of such contents; (3) packing, etc., in the same package, etc., of candy for sale to the public at retail, pieces of candy of uniform size, etc., with centers of a different color, etc., and contained within wrappers, together with larger pieces of candy to be given as prizes to those procuring piece of candy with center of a particular color or having a particular color; (4) supplying, etc., wholesalers, etc., with assortments, together with a push card or punchboard, for use or which may be used, in distributing or selling said candy to public at retail; (5) furnishing to wholesalers, etc., a push card or punchboard, either with packages or assortments or separately, informing purchaser that products in question are being sold to public by lot or chance, etc.; (6) furnishing wholesalers, etc., with display cards, either with assortments or separately, informing public that products are being sold to public by lot or chance, etc.; and (7) furnishing wholesalers with display cards or other printed matter for use in connection with sale of such products and which inform purchasing public that upon the obtaining by the ultimate purchaser of a piece of a particular colored center large piece or small box of candy or another article of merchandise will be given free to such purchaser; as in order below in detail specified and set forth.

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[1] Modifying decree in question not reported in Federal Reporter.

Modified Order to Cease and Desist

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on June 21, 1935, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of Section 5 of the Federal Trade Commission Act, and on June 21, 1935, issued, and on June 26, 1935, served its order to cease and desist; and it further appearing that on July 1, 1936, the United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion and entered its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars, and subsequently, on July 19, 1940, modified its 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 the said court's modified decree:

It is hereby ordered, 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 punch board, for use or which may be used in distributing or selling said candy to the public at retail.

5. Furnishing to wholesale dealers and jobbers a device commonly called a push card or a 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 further ordered, That respondent, The Bonita Co., a corporation, 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
A. McLEAN & SON

MODIFIED CEASE AND DESIST ORDER

Docket 2264. Order, May 17, 1941

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which (1) original order issued on June 21, 1935, 20 F. T. C. 468, prohibiting sale of candy by lottery schemes or devices; (2) Circuit Court of Appeals for the Seventh Circuit, on July 1, 1936, in *Federal Trade Commission* v. *A. McLean & Son, M. J. Holloway & Co., Queen Anne Candy Co.* and *The Bonita Co.*, 84 F. (2d) 910, 22 F. H. C. 1149, rendered its opinion and entered its decree modifying said order of the Commission in certain particulars and affirming the same in other particulars; and (3) on July 19, 1940, in *Federal Trade Commission* v. *A. McLean & Son*, 31 F. T. C. 1828,[1] modified its said decree—

Requiring respondent, its representatives, etc., in the manufacture, sale and distribution in interstate commerce of candy and candy products, to forever cease and desist from (1) selling, etc., to jobbers, etc., for resale to retailers, candy so packed and assembled that sales thereof to the general public are to be made, or are designed to be made by means of a lottery, etc., (2) supplying, etc., wholesalers, etc., with packages or assortments of candy which are used, or are designed to be used, without alteration or rearrangement of the contents, to conduct a lottery, etc., in sale or distribution of such contents, (3) packing, etc., in the same package of candy for sale to the public at retail, pieces of candy of uniform size, etc., with centers of a different color, together with larger pieces of candy, or small boxes of candy, or other articles of merchandise, to be given as prizes to those procuring piece of candy with center of a particular color, (4) furnishing wholesalers, etc., with display cards, either with assortments or separately, informing public that products are being sold to public by lot or chance, etc., and (5) furnishing wholesalers, etc., with display cards or other printed matter for use in connection with sale of such products and which inform purchasing public that upon the obtaining by the ultimate purchaser of a piece of a particular colored center, larger piece of candy, or small box of candy or another article of merchandise will be given free to such purchaser; as in order below in detail specified and set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on June 21, 1935, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of Section 5, of the Federal Trade Commission Act, and on June 21, 1935, issued, and on

[1] Modifying decree in question not reported in Federal Reporter.

June 25, 1935, served its order to cease and desist; and it further appearing that on July 1, 1936, the United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion and entered its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars, and subsequently on July 19, 1940, modified its 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 the said court's modified decree:

It is hereby ordered, That the said respondent, A. McLean and Son, 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 of merchandise are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

4. Furnishing to wholesale dealers and jobbers, display cards, either with assortments of candy or candy products, or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

5. Furnishing to wholesale dealers and jobbers display cards or other printed matter for use in connection with the sale of candy or candy products, which said advertising literature informs the purchasing public that upon the obtaining by the ultimate purchaser of a piece of

candy of a particular colored center, a larger piece of candy or small box of candy or another article of merchandise will be given free to said purchaser.

It is further ordered, That respondent, A. McLean and Son, a corporation, 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

M. J. HOLLOWAY & COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 2265. Order, May 17, 1941

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which (1) original order issued on June 25, 1935, 21 F. T. C. 79, prohibiting sale of candy by lottery schemes or devices; (2) Circuit Court of Appeals for the Seventh Circuit, on July 1, 1936, in *Federal Trade Commission* v. *A. McLean & Son, M. J. Holloway & Co., Queen Anne Candy Co. and The Bonita Co.*, 84 F. (2d) 910, 22 F. T. C. 1149, rendered its opinion and entered its decree modifying said order of the Commission in certain particulars and affirming the same in other particulars; and (3) on July 19, 1940, in *Federal Trade Commission* v. *M. J. Holloway & Co.*, 31 F. T. C. 1829,[1] modified its said decree—

Requiring respondent, its representatives, etc., in the manufacture, sale, and distribution in interstate commerce of candy and candy products, to forever cease and desist from (1) selling, etc., to jobbers, etc., for resale to retailers, candy so packed and assembled that sales thereof to the general public are to be made, or are designed to be made by means of a lottery, etc., (2) supplying, etc., wholesalers, etc., with packages or assortments of candy which are used, or are designed to be used, without alteration or rearrangement of the contents, to conduct a lottery, etc., in sale or distribution of such contents, (3) packing, etc., in the same package of candy for sale to the public at retail, pieces of candy of uniform size, etc., with centers of a different color, together with larger pieces of candy, or small boxes of candy, or other articles of merchandise, to be given as prizes to those procuring piece of candy with center of a particular color, (4) supplying, etc., wholesalers, etc., with assortments, together with a push card or punch board, for use or which may be used in distributing or selling said candy to public at retail, and (5) furnishing to wholesalers, etc., a push card or punch board, either with packages or assortments or separately, informing purchaser that products in question are being sold to public by lot or chance, etc.; as in order below in detail specified and set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on June 25, 1935, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of Section 5 of the Federal Trade Commission Act, and on June 25, 1935, issued, and on June 27, 1935, served its order to cease and desist; and it further appearing that on July 1, 1936, the United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion and entered its decree modifying the aforesaid order of the Commission

[1] Modifying decree in question not reported in Federal Reporter.

in certain particulars and affirming said order in other particulars and subsequently, on July 19, 1940, modified its 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 the said court's modified decree:

It is hereby ordered, 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 same 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 of 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 further ordered, That respondent, M. J. Holloway & Co., a corporation, 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

QUEEN ANNE CANDY COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 2277. Order, May 17, 1941

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which (1) original order issued on June 25, 1935, 21 F. T. C. 102, prohibiting sale of candy by lottery schemes or devices; (2) Circuit Court of Appeals for the Seventh Circuit, on July 1, 1936, in *Federal Trade Commission* v. *A. McLean & Son, M. J. Holloway & Co., Queen Anne Candy Co., and The Bonita Co.*, 84 F. (2d) 910, 22 F. T. C. 1149, rendered its opinion and entered its decree modifying said order of the Commission in certain particulars and affirming the same in other particulars; and (3) on July 19, 1940, in *Federal Trade Commission* v. *Queen Anne Candy Co.*, 31 F. T. C. 1832,[1] modified its said decree—

Requiring respondent, its representatives, etc., in the manufacture, sale, and distribution in interstate commerce of candy and candy products, to forever cease and desist from (1) selling, etc., to jobbers, etc., for resale to retailers, candy so packed and assembled that sales thereof to the general public are to be made, or are designed to be made by means of a lottery, etc., (2) supplying, etc., wholesalers, etc., with packages or assortments of candy which are used, or are designed to be used, without alteration or rearrangement of the contents, to conduct a lottery, etc., in the sale or distribution of such contents, (3) packing, etc., in the same package, etc., of candy for sale to the public at retail, pieces of candy of uniform size, etc., having centers of a different color, together with larger pieces of candy to be given as prizes to those procuring piece of candy with center of a particular color, (4) supplying, etc., wholesalers, etc., with assortments, together with a push card or punchboard, for use or which may be used in distributing or selling said candy to public at retail, and (5) furnishing to wholesalers, etc., a push card or punchboard either with packages or assortments or separately, informing purchaser that products in question are being sold to public by lot or chance, etc., as in order below in detail specified and set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on June 25, 1935, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of section 5 of the Federal Trade Commission Act, and on June 25, 1935, issued, and on June 27, 1935, served its order to cease and desist; and it further appearing that on July 1, 1936, the United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion and entered its

[1] Modifying decree in question not reported in Federal Reporter.

decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars, and subsequently, on July 19, 1940, modified its 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 the said court's modified decree:

It is hereby ordered, 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 further ordered, That respondent, Queen Anne Candy Co., a corporation, 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

KIDDER OIL COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 3026. Order, May 20, 1941

Modified order, pursuant to provisions of section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which (1) Commission on September 19, 1939, 29 F. T. C. 987, made its findings and conclusion and issued cease and desist order; and (2) Circuit Court of Appeals for the Seventh Circuit, on January 15, 1941, in *Kidder Oil Co.* v. *Federal Trade Commission*, 117 F. (2d) 892, 32 F. T. C. 1823, rendered its decision modifying said order of Commission and on February 28, 1941, issued its decree modifying same and directing Commission to modify such order in accordance therewith—

Requiring respondent, its officers, etc., in connection with the offer, etc., of its product "Koatsal," in commerce, to cease and desist from representing (1) that Joseph K. Kidder is an original pioneer in the blending of colloidal graphite and lubricating oil and that he has great scientific knowledge which enabled him to develop Koatsal; (2) that Koatsal, when used as a lubricant in a motor operated under "full-film" conditions, penetrates and adheres to all metal surfaces it reaches, permeates the pores of the metal, soaks into the metal, and that the metal becomes plated with Koatsal and moving parts ride on this plating; (3) that the lubricating qualities thereof, when used as a lubricant under "full-film" conditions, are any greater than the lubricating qualities of the oil therein contained; and (4) that the usual and customary earnings or profit to be derived from the sale of its product by distributors, etc., are larger than usual amounts actually so earned under normal conditions in the due course of business; as in order below in detail set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on September 19, 1939, the Commission made its findings as to the facts and concluded therefrom that the 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 January 15, 1941, the United States Circuit Court of Appeals for the Seventh Circuit rendered its decision modifying the Commission's order to cease and desist and on February 28, 1941, the aforesaid Circuit Court of Appeals issued its decree modifying the aforesaid order of the Commission and directed the Commission to modify its aforesaid 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 the said court decree:

It is ordered, That the respondent, Kidder Oil Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its product "Koatsal" whether sold under that name or under any other name in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That Joseph K. Kidder is an original pioneer in the blending of colloidal graphite and lubricating oil and that he has great scientific knowledge which enabled him to develop Koatsal.

2. That Koatsal, when the same is used as a lubricant in a motor operated under "full-film" conditions, penetrates and adheres to all metal surfaces it reaches, permeates the pores of the metal, soaks into the metal, and that the metal becomes plated with Koatsal and moving parts ride on this plating.

3. That the lubricating qualities of Koatsal, when the same is used as a lubricant in a motor operated under "full-film" conditions, are any greater than the lubricating qualities of the oil which it contains.

4. That the usual and customary earnings or profit to be derived from the sale of its product by distributors, salesmen, and demonstrators are larger than and in excess of the usual and customary amounts actually so earned under normal conditions in the due course of business.

It is further ordered, That the respondent, Kidder Oil Co., a corporation, shall within 30 days after the entry 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

ALLIED SPECIALTIES, INC., AND RALPH J. BIERY, WILLIAM G. WHITE, AND ANNE STRINGER

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

Docket 3360. Complaint, Mar. 17, 1938—Decision, May 21, 1941

Where a corporation and its president, and secretary-treasurer, who directed and controlled its policies and operations, and who had been engaged in similar practices through the instrumentality of previous corporations, since dissolved; engaged in the competitive interstate sale and distribution of nut display warmers and peanuts for use therein, under arrangements by which owners or proprietors of the business where the warmers were placed and said corporation each retained a certain proportion of the 5 cents charged per bag of nuts, and 2 cents per bag were retained by the purchaser of the warmers;

In selling their said nut display warmers, usually in lots of 25 or more, through salesmen employed by them on a commission basis whom they furnished with advertisements to be placed in the local papers in towns in which they were preparing to solicit orders containing such typical statements as "$2,600 CASH will purchase controlling interest in business. Worth $500 monthly to right man. * * * Unusual circumstances have made this opening available. Address Box ——," and furnished with a prearranged sales talk outlining the plan of operation;

(*a*) Represented that exorbitant profits would be earned from operation of such warmers, and made use of a guarantee or repurchase agreement to be attached to contract of purchase, which provided that if a cash return of 120 percent was not realized on the investment, they would repurchase the warmers at the price of the original investment less certain rental deductions, or resell the territory; facts being none of the purchasers earned $300 to $500 monthly or any other substantial sum, as advertised, method of vending proposed was impractical and would not induce sufficient sales to cover cost of operation of said warmers, which did not earn the average amount claimed for them, and their earning capacity was grossly exaggerated;

(*b*) Represented, as aforesaid, that, upon the purchase of a designated number of said devices, they would give the purchaser exclusive territory and would place the warmers in various locations for him; facts being that, in many instances, they sold the warmers to more than one purchaser operating in territory granted as exclusive, and did not find location for operation; and

(*c*) Authorized and made use of repurchase agreement above described notwithstanding the fact they did not live up to its provisions, but, on the contrary, refused to accept the return of any warmers or to resell the territory where they were located;

With effect of misleading and deceiving a substantial number of customers and prospective purchasers of said nut display warmers into the erroneous

belief that said representations were true and, by reason thereof, into purchase of said products, with result of diverting trade unfairly from competitors who do not misrepresent their respective products or business:

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* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. John Darsey and *Mr. S. Brogdyne Teu, II*, for the Commission.

White & Jones, of Indianapolis, Ind., 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 Allied Specialties, Inc., a corporation, Ralph J. Biery, William G. White, and Anne Stringer, individually, and as president, vice president, and secretary-treasurer, respectively, of said corporation, hereinafter designated as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. The respondent, Allied Specialties, Inc., is a corporation organized and existing under the laws of the State of Indiana, having an office and principal place of business at 621 North Noble Street, Indianapolis, Ind. It is now, and for several years last past has been, engaged in the business of distributing and selling in commerce, as hereinafter set out, nut display warmers, under the trade name "Ko-Pak-Ta," and peanuts for use in said nut display warmers. All of the respondents named herein act together and in cooperation with each other in doing the things herein alleged.

The individual respondents, Ralph J. Biery, William G. White, and Anne Stringer, are president, vice president, and secretary-treasurer, respectively, of the respondent corporation, and are more actively in charge of said corporation and direct and control all of its policies and operations.

To a substantial extent, sales of said products are made by respondents to persons located in States other than the State of Indiana, pursuant to which sales, and as a part thereof, shipments are made by the respondents from the State of Indiana, through and into other

States of the United States, to said purchasers. Respondents maintain a course of trade in said nut display warmers and nuts sold and distributed by them in commerce between and among the various States of the United States.

There are other corporations, partnerships, firms, and individuals, engaged in the sale of similar products, or products to be used for same and similar purposes, who cause their products, when sold, to be transported from their respective places of business to purchasers thereof located in the various States of the United States other than the State from which said respective shipments originate. The respondents are, and have been at all times herein mentioned, in competition with such corporations, partnerships, firms and individuals in such commerce.

PAR. 2. In the course and conduct of the business as hereinabove described, the nut display warmers are sold through salesmen, who are employed on a commission basis, and each purchaser is required to purchase enough of said devices to equip and operate a "chain." The nut warmers are procured by respondents at a cost of $5.50 each, and are sold to the public in lots of twenty-five or more at a price of $26.50 each. The salesmen are paid a commission of $8.50 on the sale of each nut warmer, resulting in a net profit to respondents of $11.50 for each nut warmer sold. The respondents supply 75 envelopes of nuts with each warmer, which nuts are valued at 1⅓ cents per envelope, aggregating a total value of $1 per warmer for the nuts furnished. The warmers are located by the purchasers in public places of business where members of the public may secure nuts therefrom at 5 cents per bag. The owners or proprietors of the businesses where the warmers are placed are permitted to retain 1⅔ cents per bag for rental and service in connection with the sale of the nuts. One and one-third cents per bag is remitted to respondents and 2 cents per bag is retained by purchasers of the warmers.

In the course and conduct of the business as aforesaid, and for the purpose of promoting the sale of said products, the respondents have adopted, follow, and pursue a sales plan designed to mislead, deceive, and confuse customers and prospective purchasers respecting the earnings to be realized from the purchase and operation of the nut warmers offered for sale, and the guarantees made by respondents with regard to such earnings, which said sales plan may be summarized as follows:

(*a*) Salesmen are authorized and instructed to cause contact advertisements to be inserted in local newspapers in the territories which have been assigned to them, which advertisements grossly exaggerate the earnings to be realized from the required investments. The fol-

lowing ads are typical of those suggested by respondents for this purpose:

$2,600 CASH

will purchase controlling interest in business. Worth $500 monthly to right man. Party selected must be between 25 and 55 years of age, and furnish references. Gentile. Unusual circumstances have made this opening available. Address Box #——.

WANTED—Man, 30 years of age or over to take complete charge of business in ———. Man selected must have $400 cash and dependable references. Compensation unusually good. Give phone. Box # ——.

MANAGER WANTED—Gentile preferred by reliable company operating in 28 States, to handle its wholesale business in *name of city* and surrounding counties. Worth $300 monthly to right man. Must possess $1,250 cash. Man selected must have some business experience, excellent references, confidence in his own ability, and a strong desire to succeed. For such a man we have an excellent opportunity. Unless you meet these requirements please do not answer. Give full qualifications and phone number. Box # ——.

(*b*) Sales talks are furnished salesmen by respondents which authorize and instruct them to represent exorbitant and impossible profits to be earned from operating the nut display warmers, and to promise prospective purchasers exclusive territories upon the purchase of a designated number thereof. The sales talks suggest many different methods of representing exaggerated earnings and the value of the exclusive territory to be assigned, such as references to ambiguous provisions of the contract of purchase and comparisons with fictitious standards.

(*c*) Salesmen are authorized to offer slow prospects a repurchase agreement, or insurance policy, which may be attached as a rider to the contract of purchase, which repurchase agreement or insurance policy seemingly provides that if a cash return of 120 percent is not realized on the investment made, the nut display warmers will be repurchased by the respondents at the price of the original investment, less certain minor deductions.

(*d*) The salesmen are instructed and authorized to make many other varied representations and suggestions in aid of the sales plan set forth in subsections (*a*), (*b*), and (*c*) hereof, all of which representations and suggestions are calculated and intended to create false impressions in the minds of customers and prospective purchasers respecting the earnings to be realized and the nature and effect of various provisions of the contract of purchase and the repurchase agreement executed incident thereto.

PAR. 3. The respondent, Allied Specialties, Inc., is the successor of International Merchandising Corporation of America, which was an

Indiana corporation, and which corporation during its existence was the successor of Roy Stringer Co., Ltd., which was also an Indiana corporation. Both of the above named predecessor corporations were engaged in the sale of nut display warmers such as those being currently offered for sale and sold by the respondents, and caused their said products, when sold, to be transported from their respective places of business to purchasers thereof residing in the various other States of the United States. The respondents, William G. White and Anne Stringer, were connected with both of the said predecessor corporations in official capacities. The respondent, Ralph J. Biery, was a salesman for the Roy Stringer Co., Ltd. While so connected, as above set forth, with said predecessor corporations, the individual respondents, Biery, White, and Stringer, both in their official capacities and as individuals, actively participated in the formation and execution of a sales plan and policy for said predecessor corporations identical with and similar to, in its major respects, that which is now being used by the respondents, as set forth in paragraph 2 hereof.

PAR. 4. The use by respondents of the sales plan set forth in paragraph 2 hereof and of the representations and statements made directly by respondents and by agents of the respondents, has the tendency and capacity to confuse, mislead, and deceive purchasers and prospective purchasers respecting the real or usual profits to be derived from the operation of respondents' nut display warmers; also to confuse, mislead, and deceive customers and prospective purchasers into the erroneous and mistaken belief that their investment guarantees them a return of 120 percent and that the failure to earn such a percentage will entitle them to a refund of their money, less certain minor deductions; also to confuse, mislead, and deceive customers and prospective purchasers into the belief that they are obtaining an exclusive territory for the operation of said nut display warmers. In truth and in fact, the respondents' nut display warmers will not earn or average the amounts claimed for them and their usual earning capacity is grossly exaggerated. The repurchase agreement or insurance policy attached as a rider to the contract of purchase is not a guarantee in the true sense of the term, for it contains so many vague and veiled conditions precedent to be complied with by the purchaser as to make it impossible of fulfillment. The 120 percent profit guarantee contained therein is, by virtue of the hidden conditions, rendered a mere subterfuge. The respondents do not intend that the "exclusive territory" provision of the purchase contract or that the 120 percent earning guarantee in the repurchase agreement shall ever become effective or operative.

PAR. 5. The use of the sales plan hereinabove set forth, and the false and misleading representations made in pursuance thereof, have the tendency and capacity to, and do, mislead and deceive a substantial number of customers and prospective purchasers of nut display warmers into the erroneous belief that said representations are true, and cause a substantial number of said purchasers, because of such erroneous belief, to purchase the nut display warmers of the respondents. The aforesaid acts, practices and misrepresentations have the capacity and tendency to, and have, diverted trade unfairly to respondent Allied Specialties, Inc., from competitors who do not misrepresent their products or their respective businesses and to disrupt, demoralize, and otherwise injure the entire trade in nut display warmers. As a result thereof, substantial injury has been, and is now being, done by respondents to substantial competition in commerce among and between the various States of the United States.

PAR. 6. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondents' competitors as hereinabove alleged. Said methods, acts and practices constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress, entitled "An Act to create the Federal Trade Commission, on March 17, 1938, issued and subse- other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 17, 1938, issued and subsequently served its complaint in this proceeding upon the respondents, Allied Specialties, Inc., a corporation, and Ralph J. Biery, William G. White, and Anne Stringer, individually and as president, vice president, and secretary-treasurer, respectively, of said corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the answers of the respondents thereto, testimony and other evidence in support of the allegations of said complaint were introduced by S. Brogdyne Teu, II, attorney 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. The respondents appeared by Attorney William G. White but did not introduce evidence in opposition to the complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, answer thereto, testimony,

and other evidence, report of the trial examiners upon the evidence, brief in support of the complaint (no brief having been filed by the respondents or oral argument 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 Allied Specialties, Inc., is a corporation organized and existing under the laws of the State of Indiana, having its office and principal place of business at 621 Noble Street, Indianapolis, Ind. It is now, and for several years last past has been, engaged in the sale and distribution of nut display warmers under the trade name "Ko-Pak-Ta" and peanuts for use in said nut display warmers.

The respondents Ralph J. Biery and Anne Stringer are individuals and are, respectively, president and secretary-treasurer of respondent corporation Allied Specialties, Inc.

Respondent William G. White is an individual and until his resignation in May 1938 was vice president of respondent corporation. His activities, however, were limited to those of attorney, and said respondent did not participate in the acts and practices hereinafter described.

Respondents Ralph H. Biery and Anne Stringer are actively in charge of said corporate respondent and direct and control all of its policies and operations.

PAR. 2. The individual respondents Ralph J. Biery and Anne Stringer have previously been engaged in acts and practices similar to those hereinafter described, as officers, directors, and salesmen of various corporations owned and controlled by them. In 1931 Roy Stringer, Ltd., a corporation, was organized, having its principal place of business at 968 Fort Wayne Avenue. The individual respondent Anne Stringer was secretary and treasurer of said corporation, and the respondent Ralph J. Biery acted as salesman for said corporation. In April 1935, the International Merchandising Corporation of America was organized. The respondent Anne Stringer was secretary and treasurer of said corporation and respondent Ralph J. Biery acted as salesman. Both the Roy Stringer, Ltd., and the International Merchandising Corporation of America, a corporation, were discontinued prior to the organization of the respondent cor-

poration, Allied Specialties, Inc., and were engaged in acts and practices similar to, and identical with, the acts and practices hereinafter described.

PAR. 3. In the course and conduct of their business the said respondents Allied Specialties Inc., Ralph J. Biery, and Anne Stringer, hereinafter referred to as respondents, cause said nut display warmers and nuts for use therein to be shipped from their place of business in the State of Indiana to purchasers thereof located in various other States of the United States. Said 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.

PAR. 4. Respondents are engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms, and individuals engaged in the sale and distribution of similar products in commerce among and between the various States of the United States.

PAR. 5. In the course and conduct of their business, respondents sell said nut display warmers, usually in lots of 25 or more, through salesmen who are employed on a commission basis. These nut display warmers are purchased by respondents at a cost of $5.50 each and are sold to the public in lots of 25 or more at a price of $26.50. The salesmen are paid a commission of $8.50 on the sale of each nut warmer. The respondents supply 75 envelopes of nuts with each warmer. The purchasers of such warmers place them in public places of business where members of the public may secure nuts therefrom at 5 cents per bag. The owners or proprietors of business where the warmers are placed are permitted to retain 1⅔ cents per bag for rental and service in connection with sale of the nuts, 1⅓ cents per bag is remitted to the respondents, and 2 cents per bag is retained by purchaser of the warmers.

PAR. 6. For the purpose of promoting the sale of said nut display warmers, the respondents follow and pursue a sales plan designed to mislead, deceive, and confuse customers and prospective purchasers respecting the earning to be realized from the purchase and operation of the nut warmers offered for sale.

The respondents employ a number of sales representatives who travel through the various States of the United States, calling upon prospective purchasers and soliciting orders for respondents' nut display warmers. Such salesmen, when preparing to operate in a particular town or locality, place an advertisement in the local news-

paper, which advertisement is furnished by the respondents for use of said salesmen and of which the following are typical examples:

$2,600 CASH

will purchase controlling interest in business. Worth $500 monthly to right man. Party selected must be between 25 and 55 years of age, and furnish references. Gentile. Unusual circumstances have made this opening available. Address Box # ——.

WANTED—Man, 30 years of age or over to take complete charge of business in _____. Man selected must have $400 cash and dependable references. Compensation unusually good. Give phone. Box # ——.

MANAGER WANTED—Gentile preferred by reliable company operating in 28 States, to handle its wholesale business in (*name of city*) and surrounding counties. Worth $300 monthly to right man. Must possess $1,250 cash. Man selected must have some business experience, excellent references, confidence in his own ability, and a strong desire to succeed. For such a man we have an excellent opportunity. Unless you meet these requirements please do not answer. Give full qualifications and phone number. Box # ——.

When said representative of respondent receives a reply to such advertisement, an appointment is arranged with the prospective purchaser, and said representative outlines the plan of operation, usually following a prearranged sales talk furnished by the respondents, and represents that exorbitant profits will be earned from operating the nut display warmers and promises such prospective purchasers exclusive territory upon the purchase of a designated number of such devices and further represents that the respondents will place such devices in various locations for the prospective purchaser.

Salesmen are authorized to offer prospects a repurchase agreement, which may be attached as a rider to the contract of purchase, which provides that if a cash return of 120 percent is not realized on the investment made, the nut display warmers will be repurchased by the respondents at the price of the original investment less certain rental deductions, or the territory resold by the respondents.

PAR. 7. All the representations made by the respondents as part of such sales plan and scheme are grossly exaggerated, misleading, and untrue. None of the purchasers of respondents' nut warmers earn $300 to $500 monthly or any other substantial sum, but, instead, it has been the experience of some of such purchasers that the method of vending proposed by the respondents through such device is impractical and will not induce a sufficient amount of sales to cover the cost of operating such nut display warmers. The nut display warmers do not earn the average amounts claimed for them and their earning capacity is grossly exaggerated. The respondents do not in all in-

stances place said nut warmers in locations for operation, as represented by their salesmen. The respondents do not permit a return of the nut display warmers by a purchaser or live up to the agreements contained in the so-called repurchase agreement executed, but, instead, refuse to accept return of any such devices or to resell the territory where such devices are located. Respondents do not in all cases give exclusive territory to the purchaser but, in many instances, have sold such nut display warmers to more than one purchaser operating in the same territory, granted as exclusive. The representations contained in respondents' repurchase agreement that the nut warmers will be repurchased from the purchaser or the territory resold, if a cash return on investment of 120 percent is not received, has a tendency and capacity to cause purchasers to believe that respondents guarantee a net return of 120 percent on investment when in fact no such guarantee is given.

PAR. 8. The use of the sales plan hereinabove set forth and the false and misleading representations made in connection therewith have the tendency and capacity to, and do, mislead and deceive a substantial number of customers and prospective purchasers of nut display warmers into the erroneous belief that such representations are true and cause a substantial number of said purchasers, because of such erroneous belief, to purchase respondents' nut display warmers. The aforesaid acts and practices have the capacity and tendency to and have diverted trade unfairly to the respondents from competitors engaged in the sale and distribution of similar products in commerce among and between the various States of the United States who do not misrepresent their products or their respective businesses.

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, answers of the respondents, testimony, and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, the report of the

trial examiners upon the evidence, and brief filed in support of the complaint; 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 Allied Specialties, Inc., a corporation, its officers, directors, agents, representatives, and employees and the respondents Ralph J. Biery, an individual, and Annie Stringer, an individual, 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 nut display warmers and nuts for use therein and other similar products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing any specified sum of money as possible earning or profits of operators or purchasers of respondents' nut display warmers which is not a true representation of the average net earnings or profits consistently made by operators of such nut display warmers in the ordinary course of business and under normal conditions and circumstances.

2. Representing, directly or by inference, that the respondents assign exclusive territorial rights within any certain trade area to any purchaser or prospective purchaser of said nut display warmers when such exclusive territory is not, in fact, alloted and maintained by the respondent.

3. Representing, directly or by inference, that respondents obtain locations for said nut display warmers when locations for all nut warmers sold by the respondents are not, in fact, obtained by the respondents.

4. Representing, directly or by inference, that the respondents resell or permit the return of said display nut warmers for refund of investment in case the purchaser thereof is dissatisfied, unless and until such devices are so disposed of and the investment, in fact, returned to dissatisfied customers.

5. Representing, directly or by inference, that respondents guarantee any specified amount as earnings or profits to purchasers or operators of respondents' nut display warmers.

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

It is further ordered, That the complaint be dismissed as to the respondent William G. White.

IN THE MATTER OF

WITOL, INC., WITOL BEAUTY LABORATORIES, INC., AND WILLIAM WITOL, ANN FELIX AND HATTIE BLANKFELD

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

Docket 3934. Complaint, Oct. 24, 1939—Decision, May 23, 1941

Where two corporations, business operations of one of which were subsequently discontinued, together with the individual, who was president, treasurer, and principal stockholder of both and formulated and controlled their practices and policies, engaged respectively in interstate sale and distribution of cosmetic preparation known as "Witol's New Liquid Skin Peel" and "Take-Off," as treatments for pimples, blackheads, and other skin blemishes; by means of advertisements disseminated through the mails, newspapers and periodicals, and circulars and other printed or written matter—

(*a*) Represented, directly and indirectly, that their aforesaid preparations were effective in removing the outer layer of skin and giving user a new, fresh surface skin, and in treatment and removal of pimples, blackheads, whiteheads, freckles, and superficial skin blemishes, and would cause large pores and fine lines to diminish; facts being said preparations would not do any of such things; and

(*b*) Represented that they were making a special offer of $10.85 worth of merchandise for the price of 98 cents, and that such offer was limited, through such typical statements as "This *Special Introductory Offer* made to you * * * is for a limited time only," and "Notice—There is only a limited number of these Special Introductory Offer sets—no more can be promised—Don't delay—First Come, First Served. ONLY ONE SET TO A PERSON," facts being such offer was not special but constituted the usual and customary method of distribution used by them in the ordinary and usual course of business, and as many sets as were desired were sold to any one person without limitation;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and of inducing it, because of said belief, to purchase their cosmetic 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. Miles J. Furnas* and *Mr. John W. Addison*, trial examiners.

Mr. S. Brogdyne Teu, II, for the Commission.

Mr. John A. Bolles, 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 Witol, Inc., Witol Beauty Laboratories, Inc., corporations, and William Witol, Ann Felix, and Hattie Blankfeld, individually and as officers of Witol, Inc., and Witol Beauty Laboratories, Inc., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, William Witol, is an individual and is engaged in the sale and distribution of the preparations hereinafter described. Respondent, William Witol, conducts his business in connection with the sale and distribution of such preparations through various and sundry corporate instrumentalities. In this and in doing the acts and things hereinafter alleged, William Witol is aided and assisted by the respondents Ann Felix and Hattie Blankfeld who, with said respondent William Witol, serve as officers of such corporations. Respondent William Witol is presently using the corporate respondents Witol, Inc., and Witol Beauty Laboratories, Inc., in conducting said business and in doing the acts and things hereinafter alleged, and he has heretofore used the corporations Dermolav Laboratories, Inc. and Marvo Beauty Laboratories, Inc., for said purposes.

PAR. 2. Respondent Witol, Inc., and Witol Beauty Laboratories, Inc., are corporations organized and doing business under and by virtue of the laws of the State of New York.

Respondent William Witol is president and treasurer of the respondents Witol, Inc., and Witol Beauty Laboratories, Inc., respondent Ann Felix is an individual and is vice president of respondents Witol, Inc., and Witol Beauty Laboratories, Inc.; and respondent Hattie Blankfeld is an individual and is secretary of respondents Witol, Inc., and Witol Beauty Laboratories, Inc. All of said respondents have their office and principal place of business at 1700 Broadway, New York, N. Y.

Respondent William Witol is the principal stockholder in, and formulates, controls, and dominates the practices and policies of, the respondent corporations Witol, Inc., and Witol Beauty Laboratories, Inc. All of the said respondents have acted together and in cooperation with each other in carrying out the acts, practices, and methods hereinafter alleged.

PAR. 3. Said respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of certain cosmetic preparations known as and sold under the name "TAKE-OFF" and "WITOL'S NEW LIQUID SKIN PEEL," which are offered for sale and sold as treatments for pimples, blackheads, whiteheads, coarse pores, freckles and other conditions of the skin which might be said to blemish the complexion.

PAR. 4. In the course and conduct of their business, respondents cause said preparations, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. 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 statements concerning their said products by United States mails and 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 in the District of Columbia, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said products; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said products in commerce, as "commerce," is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements and circulars disseminated and caused to be disseminated as aforesaid are the following:

Now you can get a
CLEAR NEW SKIN

(Picture of Girl)

Read This
Free Offer

and know how such Pimples, Blackheads, Freckles and superficial Blemishes as are wholly in outer skin are now quickly removed. When your old outer layer of skin is flaked away, you have a new, fresh surface skin. Large pores and fine lines diminish and you look younger, more lovable! DO IT YOURSELF AT HOME—QUICKLY! "This new home method is all explained and free Treatise is being mailed free to readers of this magazine. So, worry no more over your humiliating, superficial blemishes or signs of aging in your outer skin. Get this new Treatise now. Simply send post card or letter to WITOL BEAUTY LABORATORIES, INC., Dept. 367, No. 1700 Broadway, New York, and you will receive it in plain wrapper, postpaid and absolutely FREE. If pleased tell friends.

Not only will my new liquid skin peel clear your old outer skin of ugly superficial pimples, blackheads, whiteheads, coarse pores, outer freckles, and other annoying superficial blemishes, but it will do its work in a few days. You know, perhaps, how often one is told in regard to a complexion treatment that they must "persist." Likely enough they "persist" for months only to discover after such a waste of time and money that no good has been accomplished.

PAR. 6. 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 or therapeutic properties of respondents' preparations, respondents have represented and do now represent, directly or indirectly, that

(1). Their preparation "TAKE-OFF" is an effective preparation for the treatment of pimples, blackheads, whiteheads, freckles, and superficial blemishes of the human skin, and that its use will cause large pores and fine lines to diminish.

(2). Their preparation "TAKE-OFF" is an effective preparation for the treatment of pimples, blackheads, whiteheads, coarse pores, outer freckles, and other annoying superficial blemishes;

(3). Their preparation "TAKE-OFF" is an effective preparation for the removal of the outer layer of the human skin and that its use will give one a new, fresh surface skin.

The respondent further, through the use of the statements above set out and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial or therapeutic properties of respondents' preparation, have represented and do now represent, directly and indirectly, that their preparation "WITOL'S NEW LIQUID SKIN PEEL":

1. Is an effective preparation for the removal of the outer layer of the skin.

2. Is an effective preparation for the removal of blackheads, whiteheads, coarse pores, outer freckles, superficial pimples, and annoying superficial blemishes, and that only a few days' use will be required to effect such result.

The aforesaid representations. statements and advertisements used and disseminated by the respondents as hereinabove described are

grossly exaggerated, misleading and untrue. In truth and in fact, the preparation "TAKE-OFF" is not an effective treatment for pimples, blackheads, whiteheads, freckles, and superficial blemishes of the human skin, nor will its use cause large pores and fine lines to diminish. Said preparation is not an effective treatment for the removal of the outer layer of the human skin and its use will not give the user a new, fresh surface skin. Respondents' preparation "WITOL'S NEW LIQUID SKIN PEEL" is not an effective treatment for the removal of the outer layer of the skin, nor will its use remove blackheads, whiteheads, coarse pores, outer freckles, superficial pimples, or annoying superficial blemishes within a few days or any other length of time.

PAR. 7. In the course and conduct of their said business, the respondents have represented, through the use of advertising circulars and newspaper advertisements, that they were making to the purchasing and consuming public a special offer of $10.85 worth of merchandise for the price of 98 cents. The following are representative of the representations made by the respondents in this special offer:

This *Special Introductory Offer* made to you by Witol, Inc., of Broadway, is for a limited time only.

By this special offer we hope to make many new friends and constant users of Witol's Best Grade Preparations. Please notice that there are no sample or trial size packages in this offer—every article is illustrated in full exact size—some are even large (except Lip Paste, which is only slightly smaller), but all are stamped full sizes, and at our regular list prices total $10.85.

Notice—There is only a limited number of these Special Introductory Offer sets—no more can be promised—Don't delay—First Come, First Served.

ONLY ONE SET TO A PERSON

SUPPLY LIMITED—NO MORE CAN BE PROMISED—ACT QUICKLY!

The respondents, through the advertisement above set out in part represent that purchasers and prospective purchasers are being made a special offer; that the regular list prices of the articles included in the special offer total $10.85; that there is only a limited number of the special introductory offer sets; that only one set will be sold to a person, and that the price of 98 cents is a special price.

In truth and in fact, the offer is not a special offer; the regular list prices of the articles included in the purported special offer do not total $10.85; there is no limitation on the number of special introductory offers, the respondents hold forth continuously this offer to the public; as many sets as desired will be sold to any one person; the supply is not limited; and the price of 98 cents is the regular price of the respondents' products.

PAR. 8. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said cosmetic preparations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial part of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and the use thereof induces, or is likely to induce, directly or indirectly, the purchase by the public of respondents' said preparations.

Through the use by respondents of the word "Laboratory" in the name of respondent Witol Beauty Laboratories, Inc., and in the names of the corporations heretofore used, the respondents have represented and implied, and do represent and imply, that such preparations were and are developed in or emanate from a laboratory within the common and usual meaning of the word which signifies an establishment approximately equipped with scientific apparatus, manned by trained technicians, for the scientific and experimental study of such preparations and their use in the treatment of diseases, ailments and disorders of the skin.

In truth and in fact respondents do not own, operate or directly or indirectly control a laboratory wherein scientific and experimental studies of such preparations and their effect on the skin are pursued and such preparations are not developed in nor do they emanate from a laboratory.

PAR. 9. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations and advertisements, disseminated as aforesaid, with respect to said preparations, the source thereof and their effectiveness in use, has had and now has the capacity and tendency to and does mislead and deceive a substantial part of the purchasing public into the erroneous and mistaken belief that such false statements and representations and advertisements are true, and the use thereof induces or is likely to induce, directly or indirectly, the purchase by the public of respondents' said preparation.

PAR. 10. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 24, 1939, issued and subsequently served its complaint in this proceeding upon the respondents, Witol, Inc., Witol Beauty Laboratories, Inc., corporations, and Wil-

liam Witol, Ann Felix, and Hattie Blankfeld, individually and as officers of Witol, Inc., and Witol Beauty Laboratories, 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 and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint, including a stipulation of the facts upon the record, were introduced 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 said complaint, the answer thereto, testimony and other evidence, report of the trial examiners upon the evidence and brief in support of the complaint (no brief having been filed by the respondents or oral argument 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 Witol, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York.

Witol Beauty Laboratories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York. Respondent Witol Beauty Laboratories, Inc., ceased business operations on January 6, 1939, but has not been legally dissolved.

Respondent Ann Felix is an individual and was vice president of respondent Witol, Inc., and Witol Beauty Laboratories, Inc.

Respondent Hattie Blankfeld was secretary of respondent Witol Beauty Laboratories, Inc.

All of the respondents have their office and principal place of business at 1700 Broadway, New York City, N. Y. The individual respondents Hattie Blankfeld and Ann Felix are not now officers of either Witol, Inc., or Witol Beauty Laboratories, Inc.

Respondent William Witol is an individual and is president and treasurer of respondent Witol, Inc., and was president and treasurer of Witol Beauty Laboratories, Inc., and is the principal stockholder of both of said respondent corporations. Said respondent William Witol formulates, controls, and dominates the practices and policies of the respondent corporation Witol, Inc., and, during the time of its operation, formulated, controlled, and dominated the practices and policies of respondent Witol Beauty Laboratories, Inc. All of the respondents,

with the exception of Ann Felix and Hattie Blankfeld have acted together and in cooperation with each other in carrying out the acts and practices and methods hereinafter set forth.

PAR. 2. The respondents William Witol and Witol Beauty Laboratories, Inc., were engaged in the sale and distribution of a cosmetic preparation known as, and sold under the name of "Witol's New Liquid Skin Peel." Respondents William Witol and Witol, Inc., are engaged in the sale and distribution of a cosmetic preparation known as, and sold under the name of "Take-Off." These products are offered and have been offered for sale and sold as treatments for pimples, whiteheads, coarse pores, freckles, and other conditions of the skin which blemish the complexion.

PAR. 3. In the course and conduct of their business the said respondents have caused their products, when sold, to be transported from their 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. The respondents have, at all times mentioned herein, 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. 4. In the course and conduct of their aforesaid business the respondents William Witol, Witol, Inc., and Witol Beauty Laboratories, Inc., have disseminated false statements concerning their products by United States mail, by insertion in newspapers and periodicals having general circulation, and also in circulars and other printed or written matter, all of which were distributed in commerce among and between various States of the United States and in the District of Columbia, and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said products, and have disseminated false advertisements concerning their said products by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false statements and representations contained in advertisements and circulars disseminated and caused to be disseminated as above set forth, are the following:

Now you can get a CLEAR NEW SKIN

(Picture of Girl)

Read this Free Offer

and know how such Pimples, Blackheads, Freckles, and superficial Blemishes as are wholly in outer skin are now quickly removed. When your old outer layer of skin is flaked away, you have a new, fresh surface skin. Large pores and fine lines diminish and you look younger, more lovable!

DO IT YOURSELF AT HOME—QUICKLY!

This new home method is all explained and free Treatise is being mailed free to readers of this magazine. So, worry no more over your humiliating, superficial blemishes or signs of aging in your outer skin. Get this new Treatise now. Simply send post card or letter to WITOL BEAUTY LABORATORIES, INC., Dept. 367, No. 1700 Broadway, New York, and you will receive it in plain wrapper, postpaid and absolutely FREE. If pleased tell friends.

Not only will my new liquid skin peel clear your old outer skin of ugly superficial pimples, blackheads, whiteheads, coarse pores, outer freckles, and other annoying superficial blemishes, but it will do its work in a few days. You know, perhaps, how often one is told in regard to a complexion treatment that they must "persist." Likely enough they "persist" for months only to discover after such a waste of time and money that no good has been accomplished.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents William Witol, Witol Beauty Laboratories, Inc., and Witol, Inc., respectively, have represented, directly and indirectly, that their preparations "Witol's New Liquid Skin Peel" and "Take-Off" are effective in removing the outer layer of the human skin, giving the user a new, fresh surface skin and that said preparations are effective in the treatment of, and the removal of, pimples, blackheads, whiteheads, freckles, and superficial blemishes of the human skin and will cause large pores and fine lines to diminish.

PAR. 6. The aforesaid representations, statements, and advertisements used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading and untrue. Respondents' preparations "Witol's New Liquid Skin Peel" and "Take-Off" will not remove the outer layer of the human skin or give the user a new, fresh surface skin, and said preparations are not effective in the treatment of, or the removal of, pimples, blackheads, whiteheads, freckles, or superficial blemishes of the skin and will not cause large pores and fine lines to diminish.

PAR. 7. In the course and conduct of their business respondents William Witol and Witol, Inc., prior to November 5, 1939, have represented, through the use of advertisements disseminated as hereinabove described, that they are making a special offer of $10.85 worth of merchandise for the price of 98¢ and that such offer is limited. The following is typical of the representations made by the respondents in this special offer:

This *Special Introductory Offer* made to you by Witol, Inc., of Broadway, is for a limited time only.

By this special offer we hope to make many new friends and constant users of Witol's Best Grade Preparations. Please notice that there are no sample or trial size packages in this offer—every article is illustrated in full exact size—some are even large (except Lip Paste, which is only slightly smaller), but all are standard full sizes, and at our regular list prices total $10.85.

Notice—There is only a limited number of these Special Introductory Offer sets—no more can be promised—Don't delay—First Come, First Served.

ONLY ONE SET TO A PERSON

SUPPLY LIMITED—NO MORE CAN BE PROMISED—ACT QUICKLY!

The offer so represented was not a special offer, but, instead, constituted the usual and customary method of distribution used by the respondents in the ordinary and usual course of business, and as many sets as were desired were sold to any one person without limitation.

PAR. 8. The use by the respondents of the false, deceptive, and misleading statements, representations, and advertisements disseminated as hereinabove set forth with respect to respondents' cosmetic preparations and their 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 and mistaken belief that such false statements, representations, and advertisements are true, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' cosmetic 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, answer of the respondents, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of the allegations of the complaint, report of the trial examiners upon the evidence, and brief in support of the complaint (no brief having been filed by respondents or oral argument requested), and the Commission having made its findings as to the facts and its conclusion that said respondents Witol, Inc., a corporation, Witol Beauty Laboratories, Inc., a corporation, and William Witol, an individual and as

officer of Witol, Inc., and Witol Beauty Laboratories, Inc., have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Witol, Inc., a corporation, and Witol Beauty Laboratories, Inc., a corporation, their officers, representatives, agents, and employees, and respondent William Witol, an individual, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their cosmetic preparations known as "Witol's New Liquid Skin Peel" and "Take-Off" or any other preparations of substantially similar compositions 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 by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference:

(*a*) That respondents' preparations "Witol's New Liquid Skin Peel," or "Take-Off" will remove the outer layer of the human skin and give the user a new, fresh surface skin; or

(*b*) That respondents' said preparations are effective in the treatment of pimples, blackheads, whiteheads, freckles, or superficial blemishes of the skin; or

(*c*) That the use of said preparations will cause large pores and fine lines to diminish; or

(*d*) That said preparations are sold by means of a special or limited offer when the method of distribution is the usual and customary method used by the respondents in the usual and customary course of business, and when there is no limitation of the sale of such products.

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 respondents' cosmetic preparations "Witol's New Liquid Skin Peel" or "Take-Off," which advertisement contains any of the representations prohibited in paragraph 1 hereof and respective subdivisions thereof.

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

It is further ordered, That the complaint be dismissed as to the respondents Ann Felix and Hattie Blankfeld.

IN THE MATTER OF

FONG POY, ALSO KNOWN AS FONG WAN; FONG KWON-GII, YEE NUN YET, CHAN WOON SHEUNG, AND LEE BING LIM, COPARTNERS, OPERATING UNDER THE FIRM NAME OF FONG WAN

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

Docket 3964. Complaint, Dec. 7, 1939—Decision, May 24, 1941

Where five partners engaged in interstate sale and distribution of Chinese herbs as treatments for various diseases and disorders, under a plan by which suffering members of the public were urged in their advertising to contact them, for diagnosis by the partners and prescription of the proper herbs to cure or relieve the particular disorders by Fong Poy, also known as Fong Wan, who undertook from statements of prospective purchasers calling at the partnership's place of business, and brief observation to determine the nature of the ailment and prescribe herbs therefor, placing particular emphasis upon the nature and sound of the patient's voice, and, in numerous instances, made purported diagnosis upon the basis of such information as could thus be obtained from prospect by mail, without any personal observation, and selected and mailed herbs to purchaser; by means of advertisements disseminated through the mails, newspapers, and periodicals, and circulars and other printed or written matter, including numerous purported testimonial letters containing representations with respect to benefits allegedly received through use of their herbs—

Represented directly or through implication that their herbs constituted a cure or remedy for, and possessed substantial therapeutic value in, the treatment of, numerous diseases and disorders including cancer, tuberculosis, ulcers, tumors, diabetes, Bright's disease, kidney, bladder and prostate gland troubles, paralysis, rheumatism, and arthritis, high and low blood pressure, asthma, influenza, coughs and colds, varicose veins, cross-eyes, neuritis, heart trouble, blood disorders, pyorrhea, stomach troubles, dysentery, pains, dizziness, hardening of the arteries, goiter, bronchial trouble, sinus trouble, liver and gall bladder troubles, nervous attacks and disorders, obesity, headaches, and piles; that their herbs built up the body, purified the blood, renewed strength, stopped pain, and washed away diseases from the body, and that said Fong Poy had the ability to diagnose numerous diseases and ailments and prescribe remedies therefor;

The facts being—

(1) It is impossible to diagnose human ailments or disorders through methods employed by said partners which are based upon doctrines of historical interest only, and have been without scientific acceptance for several centuries, and there is no factual or scientific basis for theory that ailments can be diagnosed by listening to the voice; Chinese drugs of therapeutic value are known to the medical profession and are in use in various forms, though, in many cases with the useful chemicals extracted by modern medicine employed in preference to the crude drugs

as permitting better control of the dosage; said partners' use of various crude drugs in the form of tea has no scientific basis for the treatment of disease, while, aside from inability to determine definitely exact dosage, prolonged boiling of herbs as recommended would tend to destroy the chemical agents or the medicinal materials upon which they depend for their purported efficacy; and

(2) Said herbs alone or in combination do not constitute a cure or remedy for, or possess any therapeutic value in the treatment of, cancer, tuberculosis, diabetes, Bright's disease, influenza, prostate gland troubles, paralysis, varicose veins, hardening of the arteries, cross-eyes, obesity, gall-stones, or stomach ulcers, nor for all diseases and conditions included by such general designations as heart trouble, kidney trouble, bladder trouble, liver trouble, stomach trouble, blood disorders, high and low blood pressure and bronchial disorders, would have no effect upon the underlying causes of certain conditions affording only temporary alleviation of certain symptoms such as pain associated with arthritis and rheumatism, in case of drugs with analgesic action, and paroxysms of asthma and congestion of the mucus membrane in colds, in the case of drugs containing ephedrine; and, while herb preparations containing iodine might be of some value in types of goiter due to iodine deficiency, in other types they would be definitely harmful; said herbs have no therapeutic value in the treatment of pyorrhea and will not accomplish the results otherwise claimed therefor; and none of said partners has the ability to diagnose diseases or ailments scientifically or prescribe remedies therefor;

With effect of misleading a substantial portion of the purchasing public with respect to the therapeutic values of their herbs, and of causing it thereby to purchase substantial quantities thereof:

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

Before *Mr. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners.

Mr. William L. Pencke, *Mr. Robert Mathis, Jr.*, and *Mr. John W. Brookfield, Jr.*, for the Commission.

Mr. Frank M. Carr, of Oakland, 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 Fong Poy, also known as Fong Wan, Fong Kwongii, Yee Nun Yet, Chan Woon Sheung, and Lee Bing Lim, copartners operating under the firm name of Fong Wan, 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 Fong Poy, also known as Fong Wan, Fong Kwongii, Yee Nun Yet, Chan Woon Sheung, and Lee Bing Lim are copartners operating, trading, and doing business under the firm name of Fong Wan, with their principal place of business located at 576 Tenth Street, in the city of Oakland, State of California. Respondents during the year last past have been, and still are, engaged in the sale and distribution of Chinese herbs which are offered for sale and sold as a treatment for diseases and disorders of the human body.

In the course and conduct of their business respondents cause said herbs, when sold, to be transported from their 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. Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said herbs in commerce among and between the various States of the United States and in the District of Columbia.

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

Beginning in the year 1916, the Fong Wan Herbalist has made a careful study of these complaints (stomach troubles) from which Americans suffer so intensely. His formula contains herbs for kidneys and liver, herbs for freeing the stomach and spleen of acid, herbs to eliminate gas and herbs to improve

the digestion. When the blood in the stomach is in good condition, the ulcers heal.

HOW CHINESE HERBS ARE MARSHALLED TO COMBAT DISEASE

Let us take a case of Gallstones, for example. The inflamed condition of the Liver causes inflammation and congestion of the Gall Duct; and the Bile either overflows, causing Yellow Jaundice, or Solidifies into Gallstones. At intervals, the liver becomes greatly inflamed, causing swelling in the entire right side of the trunk from the glands of the neck to the lower part of the abdomen. The Appendix then swells and Appendicitis sets in. When the stones are passing through, they cause such intense pain that the sufferer frequently loses consciousness. As a symptom of Gall and Liver Troubles, there is generally more or less pain starting beneath the right rib and running around the right side, up to the shoulder blades.

In a condition of this sort, five or six kinds of herbs must be compounded for the Liver and Gall; auxiliary herbs must be added to cleanse the blood and rid it of the fire element (inflammation); some herbs must be put in to cause the air and the blood to circulate properly; other varieties must be used to take away the swelling; and still other herbs must be added for Nerves of the Shoulder Blade.

The Fong Wan Herbs work independently through the blood circulation instead of weakening the individual's constitution.

RESULTS OBTAINED FROM FONG WAN HERBS

The following persons who suffered from Arthritis, Tuberculosis, Stomach Ulcers, Diabetes, Heart Trouble, Dropsy, Malignant Growths, Prostate Gland, Paralysis, Kidney Trouble and Obesity have been benefited by taking Fong Wan Herbs. * * *

BLOOD PRESSURE

At 70 years of age, Mr. L. Smith of Richmond, who suffered high blood pressure and lacked strength to walk, sought relief by takng The FONG WAN HERBS. After two months' supply of the herbs, he obtained marvelous results and enjoyed splendid health for over ten years.

ECZEMA

Herbs for Eczema must be so compounded as to remove the impurities from the blood through the action of the lungs which drive out the impurities through the pores. In addition, herb powder may be applied externally. Herbs may also be boiled for washing the affected parts. When the disease affects either the lower or the upper limbs, herbs for cleansing the spleen must be added to the herbs in the compound for the lungs, as the spleen controls the limbs.

* * * * * * *

PREVENT WINTER SUFFERING

Persons who suffer from Asthma, Colds, Coughs, Neuritis, Rheumatism, Nervous Attacks, Sharp Shooting Pains in the Hands and Legs, Poor Blood Circula-

tion and General Weakness should give their bodies more attention and better care during the cold season. They are welcome to consult Fong Wan before their ailments get a lasting grip.

The herbs sold by Fong Wan have saved the lives of many persons who had been given up to die, either with "Flu" or other serious ailments.

Respondents also, as a part of their advertising, distribute a booklet designated "Herb Lore," in which are contained many of the above quoted statements and others in which it is claimed that Fong Wan herbs are a remedy, cure or competent and effective treatment for heart trouble, high blood pressure, colds, influenza, asthma, pyorrhea, blood disorders, cross eyes and other eye troubles, cancer, stomach troubles, dysentery, pains, dizziness, hardening of the arteries, goiter, bronchial trouble, coughs, sinus trouble, liver and gall bladder troubles, diabetes and other disorders of the kidneys and bladder, nervous attacks and disorders, arthritis, obesity, headaches, neuritis, and piles; that they stop pain and give permanent relief from asthma and other disorders. This booklet also contains numerous statements to the effect that Fong Poy or Fong Wan has the ability to diagnose and heal diseases and restore health and that the herbs are compounded individually for each purchaser.

In addition to the foregoing advertisements, the respondents disseminate false advertisements in the same manner as set out above, by means of purported testimonial letters, which the respondents place in pamphlets, booklets, and advertising copy. Among and typical of the false statements and representations disseminated as aforesaid by respondents by use of purported testimonial letters in their advertising are the following:

ULCER SUFFERER RELIEVED

For 16 years I suffered with gas and pain in my stomach, which I was told was caused by ulcers. Failing to obtain relief elsewhere, I began to take the Fong Wan herbs. Now, after having drunk the herb tea for a short time, I can eat almost anything without distress.

ARE VARICOSE VEINS INCURABLE?

For more than two years I suffered from blood poisoning due to the improper functioning of my kidneys * * * The poisonous inflammation lodged in my legs, causing varicose veins. The veins in my legs swelled to such an extent that great hard lumps the size of an egg formed in them. I tried several doctors without results. After three weeks of the herb treatment I felt like a new man, and the lumps had all disappeared * * *.

RESULTS FROM CHINESE HERBS CANNOT BE DENIED

I was suffering from Yellow Jaundice. I was completely relieved by taking the Fong Wan Herbs.

* * * * * * *

I was very discouraged when the physician told me after an examination that I had a tumor and low blood pressure. To build me up enough to stand an operation would be very hard, as I had severe hemorrhages.

I heard so much good the FONG WAN HERBS did that I decided to try them. I took the herbs for over five months. Now, nearly seven years later I am in the best of health and more than thankful for what FONG WAN HERBS did for me.

* * * * * * *

I was a sufferer from kidney and prostate gland trouble that affected my back, legs and eyes. I rolled in agony from the terrible pain. After having tried different medicos without obtaining results, I decided to go to Fong Wan and take his herbs.

Then the pain became so severe that it was well nigh unbearable, my sister became frightened. Fearing that I might die, she phoned Fong Wan and was told that I should continue with the herbs. I did so, and now, after having taken the herbs for several months, all of my complaints have been overcome and I am able to resume my usual work.

* * * * * * *

For many years I suffered from pain in the back of my neck and round my heart. I was also troubled with gas, which felt like a lump in my chest. I tried several doctors and had all my teeth extracted, but failed to obtain relief. Fortunately, we heard of the wonderful results to be obtained through drinking the Fong Wan Herbs and I decided to try them. After having taken the Herb Tea for but three weeks, my recovery was complete.

* * * * * * *

For approximately two years, our son, James, suffered from a condition that was pronounced Bright's Disease. He had albumen in the Kidneys, was dizzy, listless, nervous, run down and weak. He was also troubled with a pain in his back. After having tried several doctors without results, we decided to have James try the Fong Wan herbs. He responded to the first cup of tea, and after having drunk the herb tea for three weeks he was like a new man.

* * * * * * *

While working in the copper mines at Ely, Nevada, I twice contracted Flu. The physicians at the hospital called the second attack "Intestinal influenza." I was very weak, could not eat and had pain throughout my intestines. As the physicians also said that I had Appendicitis, I had my appendix removed, but my condition was not improved. * * * Intense pain shot through my intestines and I felt that I might drop dead. Neither my kidneys nor my bowels functioned properly, laxatives having no effect. My brother urged that I go to see Fong Wan right away. I was brought to his office. I could scarcely take a step without excruciating pain. The tea from the first package of herbs cooked for me afforded instant relief. Now, after three weeks of the herbs, I feel able to return to Nevada.

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 herbs, respondents have represented and do now represent, directly and indirectly, that their herbs are a remedy or cure, or a competent and effective treatment for practically all diseases and

ailments of the human body, including cancer, tuberculosis, ulcers, tumors, diabetes, Bright's disease, kidney, bladder and prostate gland troubles, paralysis, rheumatism and arthritis, high and low blood pressure, asthma, influenza, coughs and colds, varicose veins, cross eyes, neuritis, heart trouble, blood disorders, pyorrhea, stomach troubles, dysentery, pains, dizziness, hardening of the arteries, goiter, bronchial trouble, sinus trouble, liver and gall bladder troubles, nervous attacks and disorders, obesity, headaches, and piles; that said herbs build up the body, purify the blood, renew the strength and stop pain; that said herbs wash away diseases from the body; that Fong Poy or Fong Wan is able, by observation alone, to diagnose numerous diseases and ailments and has the power to heal numerous disorders; that he has restored the health of numerous persons by the use of said herbs; that respondents' herbs are compounded individually for each purchaser.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondents as hereinbefore described are grossly exaggerated, misleading, and untrue. In truth and in fact, respondents' Chinese herbs are not a remedy or cure for, nor have they any therapeutic value in the treatment of, cancer, tuberculosis, ulcers, tumors, diabetes, Bright's disease, kidney, bladder and prostate gland troubles, paralysis, rheumatism and arthritis, high and low blood pressure, asthma, influenza, coughs, and colds, varicose veins, cross eyes, neuritis, heart trouble, blood disorders, pyorrhea, stomach troubles, dysentery, pains, dizziness, hardening of the arteries, goiter, bronchial trouble, sinus trouble, liver and gall bladder troubles, nervous attacks and disorders, obesity, headache, piles, or any other diseases or ailments of the human body. Said herbs will not build up the body, purify the blood, renew the strength, or stop pain. They do not and cannot wash away any diseases from the human body. Fong Poy or Fong Wan is not able to diagnose or heal diseases or ailments, nor has he restored the health of any persons by the use of Chinese herbs. Respondents do not in all cases or generally compound their herbs individually for each purchaser.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said Chinese herbs, 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 herbs are a cure, remedy, or effective treatment for various diseases and disorders of the human body as represented. As a result of such erroneous and mistaken be-

lief the purchasing public is induced to and does purchase substantial quantities of 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 its complaint in the above-entitled proceeding and thereafter caused same to be served on each of the respondents above named, Fong Poy, also known as Fong Wan; Pong Kwongii, Yee Nun Yet, Chan Woon Sheung, and Lee Bing Lim, copartners operating under the firm name of Fong Wan, 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' joint answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Pencke and Robert Mathis, Jr., attorneys for the Commission, and in opposition to the allegations of the complaint by Frank M. Carr, attorney for the respondents, before Miles J. Furnas and William C. Reeves, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiners upon the evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments by John W. Brookfield, Jr., attorney for the Commission, and Frank M. Carr, attorney for the respondents, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Fong Poy, also known as Fong Wan; Pong Kwongii, Yee Nun Yet, Chan Woon Sheung, and Lee Bing Lim, are copartners and carry on business under the firm name and style of Fong Wan, with their principal place of business located at 576 Tenth Street, in the city of Oakland, State of California. Respondents are engaged in the business of selling and distributing Chi-

nese herbs, which are offered for sale and sold as treatments for various diseases and disorders of the human body. In the course and conduct of their business respondents cause quantities of their herbs, when sold, to be transported from their place of business in the State of California into various other States of the United States to the respective purchasers thereof. Respondents maintain, and at all times mentioned herein have maintainded, a course of trade in their herbs in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said herbs, by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparations in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, 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, by advertisements in newspapers and periodicals, and by circulars and other printed or written matter, are the following:

Beginning in the year 1916, the Fong Wan Herbalist has made a careful study of these complaints (stomach troubles) from which Americans suffer so intensely. His formula contains herbs for kidneys and liver, herbs for freeing the stomach and spleen of acid, herbs to eliminate gas and herbs to improve the digestion. When the blood in the stomach is in good condition, the ulcers heal.

HOW CHINESE HERBS ARE MARSHALLED TO COMBAT DISEASE

Let us take a case of Gallstones, for example. The inflamed condition of the Liver causes inflammation and congestion of the Gall Duct; and the Bile either overflows, causing Yellow Jaundice, or solidifies into Gallstones. At intervals, the liver becomes greatly inflamed, causing swelling in the entire right side of the trunk from the glands of the neck to the lower part of the abdomen. The Appendix then swells and Appendicitis sets in. * * * As a symptom of Gall and Liver Troubles, there is generally more or less pain starting beneath the right rib and running around the right side, up to the shoulder blades.

In a condition of this sort, five or six kinds of herbs must be compounded for the Liver and Gall; auxiliary herbs must be added to cleanse the blood and rid it of the fire element (inflammation); some herbs must be put in to cause the air and the blood to circulate properly; other varieties must be used to take away the swelling; and still other herbs must be added for Nerves of the Shoulder Blade.

The Fong Wan Herbs work independently through the blood circulation instead of weakening the individual's constitution.

RESULTS OBTAINED FROM FONG WAN HERBS

The following persons who suffered from Arthritis, Tuberculosis, Stomach Ulcers, Diabetes, Heart Trouble, Dropsy, Malignant Growths, Prostate Gland, Paralysis, Kidney Trouble and Obesity have been benefited by taking Fong Wan Herbs. * * *

BLOOD PRESSURE

At 70 years of age, Mr. L. Smith of Richmond, who suffered high blood pressure and lacked strength to walk, sought relief by taking The FONG WAN HERBS. After two months' supply of the herbs, he obtained marvelous results and enjoyed splendid health for over ten years.

ECZEMA

Herbs for Eczema must be so compounded as to remove the impurities from the blood through the action of the lungs which drive out the impurities through the pores. In addition, herb powder may be applied externally. Herbs may also be boiled for washing the affected parts. When the disease affects either the lower or the upper limbs, herbs for cleansing the spleen must be added to the herbs in the compound for the lungs, as the spleen controls the limbs.

* * *

PREVENT WINTER SUFFERING

Persons who suffer from Asthma, Colds, Coughs, Neuritis, Rheumatism, Nervous Attacks, Sharp Shooting Pains in the Hands and Legs, Poor Blood Circulation and General Weakness should give their bodies more attention and better care during the cold season. They are welcome to consult Fong Wan before their ailments get a lasting grip.

The herbs sold by Fong Wan have saved the lives of many persons who had been given up to die, either with "Flu" or other serious ailments.

Among the various pieces of advertising material distributed by the respondents is a booklet designated "Herb Lore." This booklet contains many of the statements quoted above as well as others, of which the following are typical:

Thousands of persons are being saved by the Fong Wan herbs from unnecessary operations.

Just as a heavy fall of rain washes away diseases that affect the community collectively, so do the herbs which the herbalist combines and cooks with water wash away the diseases from the body of the individual. * * *

Fong Wan herbs take away the inflammation from the heart after which the gas and pain disappear. * * * Numerous people suffering from various sorts of heart trouble have been permanently relieved by Fong Wan harmless herbs. * * * The Fong Wan Herb Compound is different from all others. It is both mild and safe and is far better than drugs at any time.

An herb compound for a cold is therefore much more beneficial than any sort of drugs.

The Fong Wan Co. has a splendid record for the absolute and permanent relief of asthma cases.

Herbs for colds also tend to drive away influenza germs, * * *.

Up to the time of this writing not a single person who has taken the Fong Wan herbs for gall stones has either had to be operated on or has even suffered again.

Fong Wan herbs have not only cleansed the systems of many persons afflicted with various ills, but they have also helped to eradicate pyorrhea and to heal diseased gums.

Paralytic stroke quickly relieved.

In a cancer sufferer whose blood circulation is poor, the cancer is slow to develop, and the pain becomes intense at night. When the person is walking or keeps moving, the pain is greatly lessened. In cases of this kind, the blood should be enriched and strengthened, with nourishing herbs, combined with herbs to free the flood of poisonous substances. Then the cancer or growth will develop quickly and come out. In this way, pain is overcome by Chinese Herbal Remedies without resort to cocaine, morphine, or any other drug.

Respondents' booklet "Herb Lore" also contains numerous statements to the effect that Fong Poy or Fong Wan has the ability to diagnose diseases and prescribe remedies therefor.

In their advertising the respondents also use numerous testimonial letters purported to have been received from purchasers of respondents' herbs. These purported testimonials contain many statements and representations with respect to benefits alleged to have been received through the use of respondents' herbs.

PAR. 3. Through the use of the statements and representations set out above and others of similar import not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of their herbs, the respondents represent, directly or through inference, that their herbs constitute a cure or remedy for, and possess substantial therapeutic value in the treatment of, numerous diseases and disorders of the human body, including cancer, tuberculosis, ulcers, tumors, diabetes, Bright's disease, kidney, bladder and prostate gland troubles, paralysis, rheumatism, and arthritis, high and low blood pressure, asthma, influenza, coughs and colds, varicose veins, cross-eyes, neuritis, heart trouble, blood disorders, pyorrhea, stomach troubles, dysentery, pains, dizziness, hardening of the arteries, goiter, bronchial trouble, sinus trouble, liver and gall bladder troubles, nervous attacks and disorders, obesity, headaches, and piles; that respondents' herbs build up the body, purify the blood, renew the strength, and stop pain; that the herbs wash away diseases from the body; that Fong Poy, also known as Fong Wan, has the ability to diagnose numerous diseases and ailments and prescribe remedies therefor.

PAR. 4. The Commission finds that the plan or method used by the respondents in the operation of their business is substantially as follows:

Members of the public suffering from disease or physical disorders are urged through respondents' advertising to contact the respondents in order that their trouble may be diagnosed by respondents and the proper herbs prescribed to cure or relieve such disorders. The person claimed by respondents to be particularly qualified to make such diagnosis and select the herbs needed is respondent Fong Poy, also known as Fong Wan. Prospective purchasers calling at the respondents' place of business are questioned by Fong Poy as to their symptoms, and from the prospective purchaser's statement and from brief observation of the purchaser, Fong Poy undertakes to determine the nature of the ailment and to prescribe the particular herb or combination of herbs required for such ailment.

In his purported diagnosis of the patient's ailment Fong Poy places particular emphasis upon the nature and sound of the patient's voice. His theory, as stated in "Herb Lore," is that:

> Many sufferers make a low moaning sound. This is the tone of the Yii and signifies kidney trouble. A loud, cranky, quick-tempered voice indicates an ailment of the heart. A crying, choking voice signifies trouble in the lungs, while a sighing sound directs one to the spleen, intestines, etc.
>
> The detection of ailments in this way by listening to the voices is frequently far more accurate and successful than are many of the exhaustive examinations made by medical men. Any reader of this article, by carefully following suggestions, will be able to discover for himself the ailment of a person who is suffering severely.

In numerous instances the prospective purchaser does not call in person at respondents' place of business but contacts respondents by mail. In such cases the purported diagnosis is made by Fong Poy upon the basis of such information as can be obtained from the prospective purchaser by mail and without any personal observation. The herbs are then selected by Fong Poy and mailed to the purchaser.

Fong Poy is not a physician and has had no formal education or training along medical or scientific lines. The respondents' contention that Fong Poy is qualified to diagnose human ailments and to prescribe therefor is based entirely upon his claim that he has made a study of ancient Chinese writings upon the subject of herbs, these writings being largely in the nature of folklore.

Respondents customarily carry in stock some 3,000 different herbs. The herbs are intended to be taken in the form of tea. They are boiled in a prescribed quantity of water and the patient drinks a portion of the resulting solution at regular intervals.

PAR. 5. The evidence shows, and the Commission finds, that it is impossible correctly to diagnose human ailments or disorders through the method employed by respondents. The diagnosis of human ailments is a complicated and difficult matter, even for the trained and

experienced physician who has available all the necessary instruments and apparatus for making tests of the various organs of the body. Moreover, frequent and repeated examinations and tests must be made in many cases if intelligent and accurate conclusions are to be reached. The brief inquiry and cursory observation made of prospective purchasers by the respondents is wholly inadequate to reveal the actual physical condition of such persons. There is no factual or scientific basis for respondents' theory that ailments can be diagnosed by listening to the voice.

PAR. 6. As indicated by respondents' publication "Herb Lore," Commission's Exhibit No. 11, the methods of diagnosis and treatment of disease used by Fong Poy, also known as Fong Wan, are based upon doctrines which are of historical interest only, and which have had no acceptability in the scientific sense for several centuries. The "Doctrine of Significances," as it is known historically and which involves analogy between color of plant preparations and color of organs of the body or color of symptoms that may occur in the body, was abandoned, so far as Western civilization was concerned, during the Middle Ages, when the obvious lack of any relationship as having a reasonable basis was appreciated. During the nineteenth century, with the rise of, particularly, organic chemistry and the study of drugs under controlled conditions on animals, most of the folklore regarding remedies upon which Fong Poy apparently relies was abandoned.

The many thousands of materials discussed in Chinese materia medica have been thoroughly investigated by scientists all over the world and notably in this country. Those drugs which have therapeutic value are known to the medical profession and are in use in various forms. Modern medicine, however, has in many cases extracted the useful chemicals, which are used in preference to the crude drugs as the dosage can be more carefully controlled without the interference by the gum or tannin or other more or less inert materials that are in crude drugs. Among the drugs of herbal origin now being used in modern medicine are digitalis, derived from foxglove; opium, from poppy; ephedrine, from the herb Ma Huang; the laxatives cascara, rhubarb, and senna; and the expectorant ipecac.

The practice of Fong Poy of compounding various crude drugs for use in the form of tea and his methods of diagnosis have no scientific basis in the treatment of diseases and conditions of the human body. In addition to the inability to definitely determine the exact dosage free from the interference of other materials, the prolonged boiling of such herbs as recommended by the respondents would have a tendency to destroy the chemical agents or the medicinal materials upon which such herbs depend for their reported efficacy.

PAR. 7. On the subject of the therapeutic value of Chinese herbs, five expert witnesses were called at the instance of the Commission. Two of these witnesses were professors of pharmacology in outstanding medical schools and have devoted much study to the subject of herbs. Two of the remaining three witnesses were physicians and members of the faculties in prominent medical schools, while the third was a practicing physician of many years' experience. All five of these witnesses occupy eminent places in their professions.

The respondents offered no expert testimony in support of their claims for their herbs, but confined their evidence to the introduction of a number of lay witnesses. The testimony of these witnesses was, in substance, that they had formerly suffered from various ailments which had been diagnosed as such by certain physicians, that the drugs and treatments prescribed by the physicians had proved of little or no value, but that upon taking the respondents' herbs they had been cured or relieved of their ailments. Much of this testimony was in the nature of hearsay and much of it was contradicted in material respects by the testimony of the physicians in question, who were introduced by the Commission as witnesses in rebuttal. After giving full consideration to the testimony of these lay witnesses, the Commission is of the opinion and finds that the testimony is of little probative value as compared with the expert testimony in the record.

PAR. 8. The Commission finds that the respondents' representations with respect to their herbs are grossly exaggerated, false, and misleading and constitute false advertisements. Respondents' herbs or any combination of such herbs do not constitute a cure or remedy for nor do they possess any therapeutic value in the treatment of cancer, tuberculosis, diabetes, Bright's disease, influenza, prostate gland troubles, paralysis, varicose veins, hardening of the arteries, cross eyes, obesity, gallstones, or stomach ulcers.

The representation that respondents' various herbs are of value in the treatment of heart trouble is too general in its scope, as heart trouble includes many diseases and conditions usually of a chronic or organic type, for which no herb product would be of any value whatsoever. Furthermore, the drug digitalis, the more effective of respondents' drugs, must be carefully controlled in dosage in the treatment of certain well recognized specific heart conditions and its administration should be limited to such specific conditions. In some heart conditions this drug has no recognized useful effect. The use of the general term "heart trouble" to designate conditions for which respondents' herbs might be efficacious is misleading to the general public and causes it to believe that respondents' preparations are

effective in all cases of heart trouble, even of a chronic or organic nature.

The same tendency to mislead the public exists in the use of the terms "kidney trouble," "bladder trouble," "liver trouble," "stomach trouble," "blood disorders," "high or low blood pressure," and "bronchial disorders," which cover a number of diseases and conditions affecting those particular organs for which respondents' herbs have absolutely no useful therapeutic value when taken as directed.

There are a number of other diseases and conditions named by the respondents in their advertising in the treatment of which the use of respondents' herbs has no therapeutic value in excess of the temporary alleviation of certain symptoms associated with such conditions. Among these are arthritis, rheumatism, asthma, and colds. Drugs of herbal origin which have an analgesic action might afford temporary relief from the symptoms of pain associated with arthritis and rheumatism; drugs containing ephedrine might afford temporary relief from the paroxysms of asthma and also afford temporary relief from the symptoms of congestion of the mucous membrane in colds. The use of these preparations, however, would have no effect upon the underlying causes of these conditions and would not constitute a cure or remedy for such conditions.

There are some types of goiter which are due to a deficiency of iodine, and as to such types the use of herb preparations containing iodine might be of some value. There are, however, other types of goiter in which the use of iodine would be definitely harmful. The therapeutic value of respondents' herbs is limited to the extent that a deficiency of iodine is supplied when the condition is due to an iodine deficiency.

The use of respondents' herbs in the form of tea has no therapeutic value in the treatment of pyorrhea.

Respondents' herbs will not build up the body, purify the blood, or renew strength. The use of said herbs will not wash away diseases from the body. Neither the respondent Fong Poy nor any of the other respondents have the ability to properly or scientifically diagnose diseases or ailments or prescribe remedies therefor.

PAR. 9. The use by the respondents of the false advertisements referred to herein has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties and values of respondents' herbs and to cause the purchasing public to purchase substantial quantities of respondents' herbs as a result of the erroneous and mistaken belief engendered by such false advertisements.

CONCLUSION

The 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, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiners upon the evidence, briefs filed herein and oral arguments by John W. Brookfield, Jr., counsel for the Commission, and by Frank M. Carr, 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 respondents, Fong Poy, also known as Fong Wan; and Fong Kwongii, Yee Nun Yet, Chan Woon Sheung, and Lee Bing Lin, individually and trading as Fong Wan, 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 or distribution of their herbs, or any products of substantially similar composition 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 advertisement represents, directly or through inference:

(*a*) That respondents' herbs constitute cures or remedies for, or possess any therapeutic value in the treatment of, cancer, tuberculosis, diabetes, Bright's disease, influenza, prostate gland disorders, paralysis, varicose veins, hardening of the arteries, cross eyes, obesity, gallstones, stomach ulcers, or pyorrhea.

(*b*) That respondents' herbs are cures or remedies for heart trouble, kidney trouble, bladder trouble, liver trouble, stomach trouble, blood disorders, high or low blood pressure, or bronchial disorders, or constitute competent or effective treatments therefor.

(*c*) That respondents' herbs constitute cures or remedies for arthritis or rheumatism or have any therapeutic value in the treatment of such conditions in excess of affording temporary relief from the symptoms of pain.

(*d*) That respondents' herbs constitute a cure or remedy for asthma or have any therapeutic value in the treatment of such condition in excess of furnishing temporary relief from the paroxysms of asthma.

(*e*) That respondents' herbs constitute cures or remedies for colds or have any therapeutic value in the treatment thereof in excess of affording temporary relief from the symptoms of congestion of the mucous membrane.

(*f*) That respondents' herbs constitute a cure or remedy for goiter or have any therapeutic value in the treatment of such condition in excess of that afforded by supplying iodine in those cases where a deficiency of iodine exists.

(*g*) That said herbs will build up the body, purify the blood, or renew strength.

(*h*) That said herbs wash away diseases from the body.

(*i*) That respondent Fong Poy or Fong Wan, or any of the respondents, have the ability to diagnose diseases or ailments or prescribe remedies therefor.

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 respondents' herbs, which advertisement contains any of the representations prohibited in paragraph 1 hereof and respective subdivisions thereof.

It is further ordered, That the respondent 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

STEPHENSON LABORATORIES TRUST, ETC.

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

Docket 3622. Complaint, Oct. 4, 1938—Decision, May 29, 1941

Where a corporation engaged in the licensing of others to manufacture arch supports under United States letters patent and certain contrivances designated as foot exercisers, and in interstate sale to licensees, of a correspondence course of instruction in the manufacture of said articles and for their application in a system or plan of correction of foot troubles, in substantial competition with others engaged in the sale and distribution in commerce of arch supports and of correspondence courses by mail designed to render purchasers proficient in some line of business endeavor intended to increase their earning power—

(*a*) Made use of term "Laboratories" in the name employed by it and through use of such representations circulated to prospective customers as "Stephenson Laboratories Trust," "Stephenson Laboratory," and that Stephenson Laboratory was a pioneer in the making of arch supports to individual impressions represented directly and by implication that its devices, system of correction, and instruction with respect thereto, were developed in and disseminated by a laboratory;

Facts being that its so-called laboratory was merely a workroom containing the materials and tools necessary to make arch supports and foot exercisers, and not a place equipped for scientific research, nor staffed by anyone having any medical education or other special training qualifying him for research with respect to the correction of foot troubles;

(*b*) Represented in advertisements of its said courses and manufacturing licenses in magazines and periodicals of general circulation and through circulars, pamphlets, and other printed or written matter, that the structure of the foot was simple; that anyone of ordinary intelligence who mastered the course would thereby become sufficiently learned and proficient to distinguish between all surgical and nonsurgical foot conditions, and to cure or overcome all foot troubles not requiring operative surgery; and that application of its system of foot culture, foot exercise and arch supports would correct and overcome all such foot troubles and could not fail to produce successful results;

The facts being, structure of the foot is not simple, but complex; proper diagnosis is a necessary preliminary to the treatment of any foot trouble; many ailments of the foot may be due in whole or in part to systemic causes which require knowledge of the entire body for proper diagnosis and treatment; in many such instances complete mastery of its courses would not supply information needed, which could not be given by correspondence; application of its said system will not cure all foot troubles with unfailing success, since there are many foot troubles not requiring operative surgery for which arch supports and exercisers are not appropriate;

(*c*) Represented further, as aforesaid, that its system prepared the student to treat successfully many specific foot troubles including (1) weak feet, flat

feet, fallen arches, chilblains, callouses, and corns; (2) Morton's toe, hammer toe, and bunion; (3) stretched ligaments; (4) aching feet, excessive or insufficient perspiration, foot neuralgia, painful heel, and enlarged joints; and (5) misalignment of the heel;

The facts being, weak feet, flat feet, and other ailments and conditions above set out in many cases are not amenable to cure or treatment by arch supports and exercises; Morton's toe, hammer toe, and bunions frequently can be remedied only by surgery; stretched ligaments are treated in part by immobilization, and exercise is not a part of any competent treatment therefor; aching feet and other conditions set forth in aforesaid connection, are in many cases due or partly due to systemic as distinct from local foot conditions and are not amenable to successful treatment by application of arch supports or exercise; and misalignment of the heel may be due to many causes, some of which are not susceptible to effective treatment by aforesaid means; and

(*d*) Represented that purchasers of its course would be taught to get trade without soliciting, delay, or expense and that those who mastered same were assured of a paying business and could earn a big income;

Facts being it had no information concerning the success or failure of all purchasers of its course; it is common knowledge that all persons who enter any given line of endeavor are not successful and do not make large incomes; and statements with respect to financial rewards were false and misleading;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said representations and implications were true and with result, as consequence, that a number of the consuming public purchased said licenses and courses, and trade was thereby unfairly diverted to it from competitors who do not resort to misrepresentations:

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

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

Mr. Randolph W. Branch for the Commission.

Mr. Maxwell McConnell, of Boston, Mass., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Stephenson Laboratories Trust, a Massachusetts trust, trading and doing business in its own name and also under the name of Stephenson Laboratory, 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, Stephenson Laboratories Trust, is a Massachusetts trust trading and doing business under its own name and also under the name of Stephenson Laboratory, with its principal place of business at 5 Irvington Street, in the city of Boston, Commonwealth of Massachusetts.

PAR. 2. Respondent is now, and has been for the 3 years last past, engaged in the business of selling instruction in the design and manufacture of arch supports, licenses to manufacture the same under certain United States Letters Patent held by respondent, instruction in, and for the application of, a system of foot correction and culture prepared by respondent or its predecessor, and licenses for the manufacture of "foot exercisers" under certain United States Letters Patent held by respondent.

Respondent causes and has caused the said courses of instruction and licenses, when sold, to be transported from the place where its business is carried on in the Commonwealth of Massachusetts, to purchasers thereof located in States of the United States other than the Commonwealth of Massachusetts and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now and has been for more than 3 years last past in substantial competition with other firms and with individuals, partnerships, 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 arch supports and of courses of instructions, to be carried on by correspondence through the mails, designed to educate the student for and render him proficient in some particular line of business endeavor.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said courses of instruction and manufacturing licenses, respondent has caused circulars and pamphlets containing certain claims with respect to its courses and devices, the proficiency and ability which will be acquired, and the financial rewards to be anticipated, by the student who purchases said manufacturing licenses and masters said course or courses of instruction, to be distributed between and among the various States of the United States and in the District of Columbia, and has caused certain advertisements with respect thereto to be inserted in magazines and periodicals of general circularization 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:

We * * * teach you the simple construction of the foot * * *

The course of instructions is divided into two branches; both are equally easy to master by any lady or gentleman of ordinary intelligence who can read and write.

You can enter this new field of arch support making and foot culture exercises by becoming proficient in this work.

He devised a scientific functionating support and "short-cut" method of making and fitting supports to individual impression, and foot exercise methods for overcoming all foot difficulties that do not require operative surgery, such as described on page one of the pamphlet, "What is Physical Foot Culture and Other Questions Answered."

These foot exercisers * * * are rented or sold outright to the foot sufferer, who uses these or any other instructions taught him in his own home a few minutes daily, which overcomes weak feet, flat foot, distorted toes, painful heel, aching, sweaty or too dry feet, chilblains, callouses, foot neuralgia, hammer or Morton's toes, prevents corns, bunions, etc., by correcting them at their source. The results are positive * * *.

The foot has 26 delicately suspended small bones very easily displaced. Weak feet, falling arches, flat foot, crooked toes, stretched ligaments, enlarged joints, bunions and callosities are not natural to normal feet and will disappear through foot culture methods and adjustment by this system, which admits of no failure in cases not requiring operative surgery, and by wearing the proper made to impression supports; it is one hundred per cent efficient.

A sufferer is taught * * * all needful information about * * * other conditions necessary to sound, strong, vigorous feet.

In Plan A you are licensed under Patent No. 1901353 to use our method of correcting misalignment of the heel and misplacement of the anterior or metatarsal arch * * *.

Some offer their services for a certain amount * * * this can be safely done as there need be no failures under this system of correction.

There are no "ifs" or "guess sos" about this business paying, it does * * * * * * we took over his patents to license and instruct this system to others, it being a method that can be easily and thoroughly taught by mail.

We can teach you these methods in your own home in ten weeks, by taking one instruction lesson a week, or in as short a time as 30 days if you prefer to do so, although you can take as much time as you wish to complete the instructions.

Years of experience of other operators have taught just how to get trade without soliciting, delay or expense.

Do you want a new business profession of your own with all the trade you can attend to? Then become a foot correctionist, and in a few weeks earn big income in service fees—not medical nor chiropody—easy terms for home training. No further capital needed, no goods to buy, no agency.

We desire only a limited number of students and refuse many enrollments from those who let fear or doubt sit at the helm * * *

By the said statements and others of like import and effect in its said circulars, pamphlets, and advertisements respondent represents:

That the structure of the foot is simple; that anyone of ordinary intelligence who can read and write can master the courses in the design and fabrication of arch supports to suit individual requirements and in physical foot culture; that by such mastery the student will be sufficiently learned and proficient to diagnose, and to classify as surgical or nonsurgical, foot conditions that require arch supports and to design and fabricate them in the appropriate fashion, and will be qualified as a "foot correctionist"; that a foot correctionist is able to diagnose and to classify as surgical or nonsurgical, and by the application of respondent's system of foot culture, and patented foot exercisers and arch supports, to correct and overcome all foot troubles other than those requiring operative surgery, including loss of muscular tone and elasticity, weak feet, flat feet, falling arches, distorted toes, painful heel, stretched ligaments, enlarged joints, aching, sweaty or too dry feet, chilblains, callouses, foot neuralgia, hammer or Morton's toe, prevent corns and bunions, put the foot in a natural condition, make it strong, sound and vigorous, and correct misalignment of the heel and misplacement of the anterior or metatarsal arch; that respondent's system is positive and cannot fail to produce successful results; that these courses can be easily and thoroughly taught by mail and quickly mastered by the student; that the student will be taught how to get trade without solicitation, delay, or expense; that a paying business is assured; that the student can earn a big income, and that respondent desires only a limited number of students.

PAR. 5. In addition to the claims set forth in paragraph 4, respondent, in like manner has caused certain claims to be made with respect to its business and scientific status, and the origin of its devices and courses of instruction.

Included among and typical of such claims are the following:

Stephenson Laboratories Trust
Stephenson Laboratory
The Stephenson Laboratory was an early pioneer in the making of arch supports to individual impressions * * *

By the said statements and others of like import and significance, respondent directly and by inference represents that its devices, system of correction, and instruction in the design, manufacture, and application thereof were and are developed in and emanate from a "laboratory," within the common and usual meaning of the word when used in connection with the design and manufacture of devices for application to, and courses of instruction in the remedy or correction of abnormal or painful conditions of the human body, i. e., a place appropriately equipped for, and devoted to, experimental study in the anatomical, physiological, and mechanical sciences and arts,

and their application in the devising of the said articles and the compilation of courses of instruction by persons skilled in those arts and sciences.

PAR. 6. The representations made by the respondent, directly or by inference, with respect to the knowledge, ability, and proficiency to be gained from a mastery of the said courses, the results to be obtained from the application of such knowledge either in connection with the said arch supports or foot exercisers of the respondent's design or without such connection, the extent of the financial rewards available to one who becomes, through the study of the respondent's courses, proficient in the art of designing and fabricating arch supports or the respondent's system of foot cultivation, and the ease with which custom may be obtained, are false, misleading, and untrue. In truth and in fact the structure of the foot is not simple. The adequate correction of arch troubles, and deformations, diseases, and faulty conditions and ailments of the feet, and the proper designing of arch supports, require, as a preliminary, a diagnosis which can be properly made only by one familiar not only with the structure and physiology of the feet but that of the rest of the body. The knowledge necessary to a competent arch support designer or foot correctionist for the proper diagnosis of all foot troubles and conditions other than those requiring operative surgery and the application of adequate corrective or curative methods thereto by arch supports or exercisers or otherwise, and the prevention of corns and bunions, cannot be imparted by mail in the short time indicated by respondent to the ordinary literate person. A proper arch support cannot be made by one without substantial practical experience. Those mastering the courses in foot correction cannot in all cases of nonsurgical foot conditions or diseases be assured of positive and successful results from the use of the corrective system as taught, either with or without the use of exercisers of respondent's design or arch supports made and fitted in accordance with respondent's instructions. The student is not assured of a profitable business by completing the course or courses nor of a big income. Neither is the student assured that he will be able to obtain trade without solicitation, delay, or expense. There is no material limitation on the number of students desired by respondent.

PAR. 7. The representations made by respondent directly or by inference with respect to its business and scientific status and the origin of its devices and courses of instruction are false, misleading, and untrue. In truth and in fact the said devices and courses of instruction were not and are not developed and compiled in a lab-

oratory, within the common and usual conception of the word when used in connection with the design and manufacture of devices for application to and courses of instruction in the remedy or correction of abnormal or painful conditions of the human body, nor by persons skilled and experienced in the anatomical and physiological sciences.

PAR. 8. There are among the competitors of the respondent many who are engaged in the business of selling and distributing arch supports, and correspondence courses of instruction designed to educate the student for and render him proficient in some particular line of business endeavor, who do not in any way misrepresent the results which may be obtained by the use of their said arch supports, the efficacy of the application or the results of their teachings, the opportunities for financial gain to those who master the said courses or the nature of the place of origin thereof.

PAR. 9. Each and all of the foregoing false and misleading misrepresentations 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 misrepresentations 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 licenses to manufacture and courses of instruction, 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 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 said 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 October 4, 1938, issued its complaint in this proceeding and caused same to be served upon respondent Stephenson Laboratories Trust, a Massachusetts trust trading and

doing business under its own name and also under the trade name and style of Stephenson Laboratory, 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 answer thereto by respondent, 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 Maxwell McConnell, attorney for the respondent, before Miles J. Furnas, an examiner for the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, a stipulation of certain facts, report of the trial examiner, 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. Respondent Stephenson Laboratories Trust is a Massachusetts trust having its principal place of business at 5 Irvington Street, Boston, Mass. Respondent trades and does business under its own name and also under the name Stephenson Laboratory. Respondent is, and at all times mentioned in the complaint has been, engaged in the licensing of others to manufacture arch supports under certain United States letters patent and certain contrivances designated as "foot exercisers," and in connection with such licenses selling to licensees a correspondence course of instruction in the manufacture of said articles and for their application in a system or plan of correction of food troubles.

PAR. 2. In the course and conduct of this business respondent has caused said courses of instruction, licenses, and articles of merchandise for use in connection therewith, when sold, to be transported from its place of business in the State of Massachusetts to purchasers thereof located in the several States of the United States other than the State of Massachusetts and in the District of Columbia, and has at all times maintained a course of trade in commerce in said articles as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of said business respondent is now, and at all times mentioned in the complaint has been, in substantial competition with other firms, individuals, partnerships, and corporations engaged in the sale and distribution in commerce of arch supports and of courses of instruction carried on by correspondence through the mails, and designed to render purchasers proficient in some line of business endeavor intended to increase their earning power.

PAR. 4. For the purpose of inducing or procuring the purchase of its said courses of instruction and manufacturing licenses, respondent has caused certain advertisements with respect thereto to be inserted in magazines and periodicals having general circulation between and among the various States of the United States and in the District of Columbia and has caused circulars, pamphlets, and other printed or written material to be transported from its place of business to purchasers or prospective purchasers in the several States of the United States and in the District of Columbia.

The said circulars, pamphlets, and other printed or written material and advertisements make various claims with respect to respondent's courses and devices, the learning and proficiency to be acquired therefrom, and the financial rewards to be anticipated by purchasers of said licenses and courses of instruction. Included among and typical of such claims and representations were the following:

We * * * teach you the simple construction of the foot * * *.

The course of instructions is divided into two branches; both are equally easy to master by any lady or gentleman of ordinary intelligence who can read and write.

You can enter this new field of arch support making and foot culture exercises by becoming proficient in this work.

* * * he devised a scientific functionating support and "short cut" method of making and fitting supports to individual impression, and foot exercise methods for overcoming all foot difficulties that do not require operative surgery, such as described on page one of the pamphlet. "What is Physical Foot Culture and Other Questions Answered."

These foot exercisers * * * are rented or sold outright to the foot sufferer, who uses these or any other instructions taught him in his own home a few minutes daily, which overcomes weak feet, flat foot, distorted toes, painful heel, aching, sweaty, or too dry feet, chilblains, callouses, foot neuralgia, hammer or Morton's toes, prevents corns, bunions, etc., by correcting them at their source. The results are positive, * * *.

The foot has twenty-six delicately suspended small bones very easily displaced. Weak feet, falling arches, flat foot, crooked toes, stretched ligaments, enlarged joints, bunions and callosities are not natural to normal feet and will disappear through foot culture methods and adjustment by this system, which admits of no failure in cases not requiring operative surgery, and by wearing

the proper made to impression supports; it is one hundred percent efficient * * *.

A sufferer is taught * * * all needful information about * * * other conditions necessary to sound, strong, vigorous feet.

In plan A you are licensed under Patent No. 1,901,352 to use our method of correcting misalignment of the heel and misplacement of the anterior or metatarsal arch, * * *.

Some offer their services for a certain amount, * * * this can safely be done as there need be no failures under this system of correction.

There are no "ifs" or "guess so's" about this business paying, it does it; * * *.

* * * we took over his patents to license and instruct this system to others, it being a method that can be easily and thoroughly taught by mail.

We can teach you these methods in your own home in ten weeks, by taking one instruction lesson a week, or in as short a time as thirty days if you prefer to do so, although you can take as much time as you wish to complete the instructions.

Years of experience of other operators have taught just how to get trade without soliciting, delay or expense.

Do you want a new business profession of your own, with all the trade you can attend to? Then become a foot correctionist, and in a few weeks earn big income in service fees—not medical nor chiropody—easy terms for home training, no further capital needed, no goods to buy, no agency.

We desire only a limited number of students and refuse many enrollments from those who let fear and doubt sit at the helm, * * *.

PAR. 5. The representations by respondent that the structure of the human foot is simple are false in that the foot is in fact a complex structure including numerous bones and their articulations, muscles, ligaments, tendons, nerve, and blood supply systems, and other essential parts. The representations that any one of ordinary intelligence who masters respondent's course of instruction will thereby become sufficiently learned and proficient to distinguish between all surgical and nonsurgical foot conditions and will be able to cure or overcome all foot troubles not requiring operative surgery, and that such learning and proficiency can be imparted by mail, are in fact false. Proper diagnosis is a necessary preliminary to the treatment of any foot trouble. Many ailments of the foot are not due to local causes and others may be due in whole or in part to systemic causes which require knowledge of the entire body for proper diagnosis and treatment. Complete mastery of respondent's courses would not supply the information needed in many such instances, nor could the necessary information and training be given by correspondence. Respondent's representations that the application of its system of foot culture, foot exercises, and arch supports will correct and overcome all foot troubles other than those requiring operative surgery, and cannot fail to produce successful results, are false. Arch supports and exercise are not

appropriate or competent treatment for many foot troubles which do not require operative surgery.

The representations as to specific foot troubles which respondent's system is said to prepare the student to treat successfully are false in that weak feet, flat feet, fallen arches, chilblains, callouses, and corns are in many cases not amenable to cure or treatment by arch supports and exercises; Morton's toe, hammer toe, and bunions frequently can be remedied only by surgery, and in many cases cannot be adequately or properly treated by arch supports or exercises; stretched ligaments are treated in part by immobilization, and exercise is not a part of any competent treatment therefor; aching feet, excessive or insufficient perspiration, foot neuralgia, painful heel, and enlarged joints, are in many cases due or partly due to systemic as distinct from local foot conditions, and are not amenable to successful treatment by the application of arch supports or exercise; and misalignment of the heel may be due to many causes, some of which are not susceptible to effective treatment by supports and exercise.

Respondent's representations that purchasers of its course of instruction will be taught to get trade without soliciting, delay, or expense, and that those who master its course are assured of a paying business and can earn a big income, are without foundation in fact. Respondent has no information concerning the success or failure of all purchasers of its course of instruction, and one of its trustees testified that it has no means of knowing whether a purchaser of its course of instruction will or will not develop a profitable business, and that such success is largely dependent upon the individual. It is common knowledge that all persons who enter any given line of endeavor are not successful and do not make large incomes, and it is concluded that respondent's statements with respect to financial rewards to be obtained are in the circumstances stated false and misleading.

PAR. 6. By the means set out in paragraph 4 respondent circulates to purchasers or prospective purchasers of its licenses and courses of instruction representations such as:

Stephenson Laboratories Trust,

Stephenson Laboratory,

The Stephenson Laboratory was a pioneer in the making of arch supports to individual impressions.

By such representations respondent directly and by inference represents that its devices, system of correction, and instruction with respect thereto were, and are, developed in and are disseminated by a "laboratory." In the manner and connection in which the term "laboratory" is used by respondent it means a place appropriately

equipped for and devoted to experimental study in anatomical, physiological, and mechanical sciences and arts and their application by persons skilled therein to devising the articles and preparation of the courses of instruction offered by respondent. Respondent in fact maintains no laboratory. The so-called laboratory of respondent is merely a workroom containing the materials and tools necessary to make arch supports and foot exercisers, and is not a place equipped for scientific research, nor is it staffed by any person or persons having any medical education or other special training or education qualifying them for research with respect to the correction of foot troubles.

PAR. 7. The aforesaid representations are calculated to, and have the tendency and capacity to, mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said representations and implications are true. As a result thereof a number of the consuming public have purchased respondent's licenses to manufacture and courses of instruction with the result that trade has been unfairly diverted to respondent from competitors who do not resort to false and deceptive representations.

CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and 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 in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, a stipulation of certain facts, report of the trial examiner, 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 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 Stephenson Laboratories Trust, a Massachusetts trust also trading and doing business under the name Stephenson Laboratory, its trustees, officers, 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 licenses to manufacture foot supports and foot exercisers, and courses of instruction in the treatment of foot troubles, do forthwith cease and desist from, directly or by implication:

1. Using the terms "Laboratory" or "Laboratories," or any other word or term of similar import or meaning, in respondent's name or in any trade name or style used by respondent in the course and conduct of its business, or otherwise representing in any manner that respondent maintains a laboratory in which its system of foot culture or courses of instruction therein were, or are, developed or prepared.

2. Representing that respondent's course of instruction, or any substantially similar course of instruction, will equip any one with learning and proficiency adequate to:

(*a*) Diagnose and determine whether or not foot troubles require surgical treatment.

(*b*) Effectively and successfully treat nonsurgical foot troubles, regardless of origin or cause thereof.

(*c*) Effectively and successfully treat foot troubles which may result from systemic causes, such as aching feet, excessive or insufficient perspiration, foot neuralgia, painful heel, and enlarged joints; or foot troubles which may require operative surgery, such as Morton's toe, hammer toe, and bunions; or foot troubles which require immobilization as a part of any competent and adequate treatment, such as stretched ligaments, exclusively by foot supports and exercise.

3. Representing that any purchaser who masters respondent's correspondence course is assured of a profitable business or will be able to obtain trade without solicitation, delay, or expense.

It is further ordered, That 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

EDWIN CIGAR COMPANY, 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 4085. Complaint, Apr. 6, 1940—Decision, May 29, 1941

Where two corporations and four individuals who were officers, directors or stockholders therein and controlled their corporate activities; engaged, as case might be, in manufacturing cigars and in competitive interstate sale and distribution thereof, and of pipes, smoking tobacco, tobacco pouches, pipe and tobacco accessories, razor blades, shaving cream and novelties, under various corporate and trade names; in advertising their products by radio and through newspapers, magazines, catalogs and other medium—

(*a*) Represented that Manila cigars, offered at a price of 1 cent each were full-sized, full-bodied and fine-flavored; that cigars offered as a $2.50 bargain for 75 cents constituted a special offer and had the full-bodied natural aroma of rich Havana and Connecticut blended tobacco; that certain cigars offered at a "get acquainted" price of 25 for 75 cents or 3 cents each were of guaranteed 15 cent quality and were over-runs or cigars put aside for slight imperfections; that certain cigars selling for 3 cents each were made of genuine imported Havana tobacco by use of the words "GENUINE IMPORTED HAVANA" in heavy display type, accompanied by the qualification "The finest Conn. Shade-Grown and Broad-leaf tobaccos blended with," in inconspicuous and small type; that cigars offered in a close-out sale for 3 cents were perfect hand-made Lord Edwin Ambassador cigars selling for 35 years for 10 cents each and contained the choicest tobaccos, including Havana; and that cigars priced at 2 cents each or 100 for $1.96 were perfect cigars, 5¼ inches in length, were fine, hand-made, blended-with-Havana cigars and equal in smoking satisfaction to those selling for 10 cents and more;

The facts being Manila cigars referred to were of small size and defective quality, the $2.50 bargain for 75 cents, cigars had fillers of cheap domestic tobaccos originating elsewhere than in Connecticut and containing negligible amounts of Havana tobacco, if any, none of the various cigars sold at 3 cents each, were over-runs, etc., as above claimed, but all were of cheap and inferior quality, were not perfect, fine or hand-made, cigars, contained only a negligible amount of Havana tobacco, if any, and did not in any way comply with standards set up for Havana-manufactured cigars;

(*b*) Represented that certain items of merchandise such as a cigar lighter, a chrome metal pocket cigar case, a 128-page illustrated book selling at book shops at $2.50, and a handsome pocket cigar case were given free with purchase of a certain specified quantity of cigars or of certain pipes valued at $2.50 each, that cigars were given "free of charge" in connection with the purchase of various lots of cigars, and that various lots were being sold at "inventory sales prices" and "off-season sales prices," setting out opposite such sales prices in parallel columns substantially higher prices designated as "reg-

ular price per hundred"; and that an oil silk tobacco pouch of a regular value of $2, a high quality imported virgin root briar pipe of a regular value of $1, and a sample 2-ounce bag or container of "Havana Picadura" tobacco of a regular value of 25 cents were being closed out at a combination or special price of $1.19—

The facts being that none of the articles represented were given "free" but prices thereof were included in those of other articles with which they were offered; items of merchandise were not of value represented, the so-called $2.50 book being in fact a paper-backed publication purchased by them at 8 or 9 cents per copy and the tobacco pouch pipe and tobacco quoted therewith never having sold at the prices represented; pipe was neither of high quality nor imported; and so-called "regular prices" per hundred of cigars offered at "inventory sales prices" and "off-season sales prices" were fictitious;

(c) Represented that one of corporations above referred to, engaged as Edwin Cigar Company, Inc., in manufacture and sale of cigars, etc., occupied a large building as its factory and office, owned tobacco plantation and warehouses in Cuba and Connecticut, was an importer of tobacco and controlled the movement of cigar tobacco from the growing stage until sold as cigars to the ultimate consumer, through pictorial representations on letterheads, stationery, invoices and other materials, including a 12-story building represented as its factory and office building, pictures of a tropical scene and ocean-going vessels, of operators making cigars by hand and of an executive smoking a cigar, and through such legends as "Manufacturers of High Grade Cigars, Importers, Dealers, and Packers of Leaf Tobacco" and "Leaf Tobacco Warehouses, Havana, Cuba, Hartford, Conn., Suffield, Conn."; and that the other of the two corporations, engaged under name House of Westminster, Ltd., and also under trade names Westminster Steel Blade Co., and Westminster Steel Co., owned, operated, or controlled a steel company or steel blade company, wherein steel blades were manufactured for sale direct to the public;

The facts being aforesaid cigar company rented only the ground floor and basement of a six-story building, was not an importer but purchased stock from dealers in tobacco leaf, never owned any warehouses in cities referred to and did not own, charter or operate any steamships; and second corporation did not own, operate or control any steel or steel blade company, or manufacture steel razors, or sell directly from factory to consumer, but bought its products from others; and

Where said corporations and individuals, in advertising calculated to induce prospective purchasers to believe that second corporation above referred to was a British concern dealing principally in pipes and smoking accessories imported from England—

(d) Made use on letterheads and other stationery of corporate name, House of Westminster, Ltd., printed in heavy old English Gothic type and also of simulations of the British Royal Coat of Arms and depiction of a Gothic cathedral or abbey harmonizing with the word "Westminster"; and made use in its catalogs, of English names such as "Park Royal," "Trafalgar Square," "Lord Rochester," "The Britisher," etc., to designate or describe pipes sold and distributed by them and listed and described therein certain pipe tobaccos as "Belvedere London Plug British Pipe Mixture"

with pictorial representations of a crown, etc., and made statement to the effect that said corporation would accept subscriptions for all English publications together with a list of publications with prices as charged in the British Empire;

The facts being corporation above referred to was not and never had been a British company or affiliated with any such company, represented no English publications, did not accept subscriptions and was not informed with reference thereto, the numerous pipes it branded, sold, and advertised with distinctly British names and as imported were not British or English pipes and imported from England, from which many of the finest pipes of the world come, and various mixtures of pipe tobacco as aforesaid were not British tobacco or a mixture of tobaccos originating in the British Empire, but consisted almost entirely of tobaccos grown in the United States,

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, with result that members of the purchasing public bought substantial quantities of their products, and trade was unfairly diverted from competitors:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Neil P. Cullom and *Mr. Henry W. Steingarten*, of New York City, for Edwin Cigar Co., Inc., House of Westminster, Ltd., Max Rosenblum, Leonard R. Edwin, Jules M. Cole and Mrs. Max Rosenblum.

COMPLAINT

Pursuant to the provisions of the Federal 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 Cigar Co., Inc., a corporation, trading also as Cigar Makers' Federation; House of Westminster, Ltd., a corporation, trading also as Westminster Pipe Co., Westminster Steel Blade Co., and Westminster Steel Co.; Max Rosenblum, Jules M. Cole, and Leonard R. Edwin, individually, and as officers and directors of Edwin Cigar Co., Inc., and House of Westminster, Ltd., and trading also as Cigar Makers' Federation, Westminster Pipe Co., Westminster Steel Blade Co., and Westminster Steel Co.; Mrs. Max Rosenblum, individually and as an officer and director of Edwin Cigar Co., Inc., and as director of House of Westminster, Ltd.; and Fredi Mannara, John Schwab, Ruth Hess, Charles Grothe, and Park G. Shaw, individuals, trading as Cigar Makers' Federation, 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.

the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Edwin Cigar 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 100 East Sixteenth Street, New York, N. Y.

Respondent, House of Westminster, Ltd., 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 191 Fourth Avenue, New York, N. Y.

Respondents Max Rosenblum, Leonard R. Edwin, Jules M. Cole and Mrs. Max Rosenblum are, respectively, president, vice president and secretary, assistant secretary, and treasurer, of respondent Edwin Cigar Co., Inc., and all are directors of said company and of respondent House of Westminster, Ltd. Respondents Leonard R. Edwin and Jules M. Cole are respectively president and treasurer and directors of House of Westminster, Ltd.

Respondent, Edwin Cigar Co., is now, and for more than 3 years last past, has been engaged in the manufacture and in the sale and distribution of cigars in commerce among and between the various States of the United States and in the District of Columbia.

Cigars manufactured by respondent, Edwin Cigar Co., Inc., for more than 3 years last past have also been advertised and sold through the medium of the trade name Cigar Makers' Federation, using the address 35 R. Irving Place, New York, N. Y., said trade name being employed by Edwin Cigar Co., Inc., in conjunction with respondents, Jules M. Cole of 191 Fourth Avenue, New York, N. Y., Fredi Mannara of 406 East One Hundred and Twentieth Street, New York, N. Y., John Schwab of 6401 Melmetto Street, Brooklyn, N. Y., Ruth Hess, 813 Wayne Avenue, York, Pa., Park G. Shaw, 21 Franklin Street, Dallastown, Pa., and Charles Grothe, 173 East Cottage Street, York, Pa., all employees of the Edwin Cigar Co., Inc.

Respondent, House of Westminster, Ltd., since its incorporation under the laws of the State of New York in the year 1937, has been engaged in the manufacture of cigars and in the sale and distribution of cigars, pipes, smoking tobacco, tobacco pouches, pipe and tobacco accessories, razor blades, shaving cream and novelties in commerce among and between the various States of the United States and in the District of Columbia. Respondents, House of Westminster, Ltd., Leonard R. Edwin and Jules M. Cole, also employ the trade name Westminster Pipe Co. in connection with the sale of pipes, smoking tobacco, cigars, and related products, and trade also in razor blades

under the trade names of Westminster Steel Blade Co. and Westminster Steel Co.

Respondents, Max Rosenblum, Mrs. Max Rosenblum, Leonard R. Edwin, and Jules M. Cole, own and control each of said herein-named companies, including Cigar Makers' Federation and direct the activities and control the policies and affairs of each, including the conduct of sales and the character of advertising representations made in connection therewith.

The individual respondents and the corporate respondents act in conjunction and cooperation with each other in the performance of the acts and practices hereinafter alleged.

The business of each of said hereinbefore-mentioned companies is maintained and conducted by respondents Max Rosenblum, Mrs. Max Rosenblum, Leonard R. Edwin, and Jules M. Cole from an identical location in the city of New York, N. Y., namely, the basement and ground floor of 34 Union Square.

PAR. 2. Respondents cause their products, when sold by them, to be transported from their aforesaid places of business in the State of New York to the purchasers thereof located in the 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.

In the course and conduct of their said business the respondents, trading as hereinbefore described, are now and have been in competition with other individuals, partnerships, and corporations also engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia, of cigars, pipes, smoking tobacco, tobacco pouches, pipe and tobacco accessories, razor blades, shaving creams and various novelties.

PAR. 3. Respondents, in the course and conduct of their business and for the purpose of inducing the purchase of their various products, have set forth in radio advertising and in newspapers and magazines, catalogs, and other advertising media circulated and distributed, various representations purporting to cover the nature, quality, character, grade, and price of their said products.

Typical of the representations so made by the respondents, in connection with the offering for sale and sale of its cigars and other products are the following:

1. That Manila cigars, offered at a price of 1 cent each, are full size, full-bodied, fine-flavored cigars.

2. That cigars offered for sale as a $2.50 bargain for only 75 cents constitute a special offer and have the full-bodied, natural aroma of rich Havana and Connecticut blended tobaccos.

3. That an oil silk tobacco pouch of a regular value of $2, a high quality imported virgin root briar pipe of a regular value of $1, and a sample 2-ounce bag or container of "Havana Picadura" tobacco of a regular value of 25 cents, are being closed out at a combination or special price of $1.19.

4. That certain cigars offered at a "get acquainted" price of 25 for 75 cents or 3 cents each are of guaranteed 15-cent quality and that such cigars are over-runs or cigars put aside for slight imperfections.

5. That certain cigars selling for 3 cents each are made of genuine imported Havana tobacco by the use of the words "GENUINE IMPORTED HAVANA TOBACCO," in a 1-column box and printed in heavy display type accompanied by the following qualification:

The finest Conn. shade-grown tobacco blended with

in small, illegible type:

6. That cigars offered in a close-out sale for 3 cents each are perfect, handmade Lord Edwin Ambassador cigars selling for 35 years at 10 cents each and contain the choicest tobaccos, including Havana.

7. That cigars priced at 2 cents each or 100 for $1.96 are perfect cigars, 5¼″ in length, and are fine, handmade blended with Havana and equal in smoking satisfaction of cigars selling at 10 cents and more.

8. That certain items of merchandise such as a cigar lighter, a chrome metal pocket cigar case, a 128-page illustrated book selling in book shops at $2.50, a handsome pocket cigar case, and other articles, are given free with the purchase of a certain specified quantity of cigars or with the purchase of certain of respondents' pipes valued at $2.50 each.

9. That cigars are given "free of charge" in connection with the purchase of various lots of cigars.

10. That various lots of cigars are being sold at "inventory sales prices" and "off season sales prices," opposite the sales prices of which are set out in parallel columns substantially higher prices designated as "regular price per hundred."

11. That the respondent, Edwin Cigar Co., Inc., occupies a large building as a factory and office, owns tobacco plantations and warehouses in Havana, Cuba, Hartford, Connecticut, and Suffield, Connecticut, and that it is an importer of tobacco and controls the movement of cigar tobacco from the growing stage until sold as cigars to

the ultimate consumer, which representations are made by means of pictorial representations appearing on letterheads, stationery, invoices and other material, such as the picture of a 12-story building represented to be respondent's factory and office building, the picture of a tropical plantation scene and an ocean-going vessel, the picture of operators seated at a bench or table making cigars by hand, the picture of a box of cigars, and the picture of an executive smoking a cigar, and in addition to such picturizations there also appears the following legend:

Manufacturers of
High Grade Cigars
Importers, Dealers and Packers of
Leaf Tobacco

and to the right of said picturizations the following:

Leaf Tobacco Warehouses
Havana, Cuba Hartford, Conn.
Suffield, Conn.

12. That the respondent, House of Westminster, Ltd., owns, operates, and controls a steel company or steel plant wherein razor blades are manufactured for sale direct to the public.

PAR. 4. The foregoing statements and representations made by the respondents as well as others of similar import which are not specifically set out herein are false, deceptive, and misleading. In truth and in fact, the Manila cigars advertised by the respondent were not full size, full-bodied, or fine-flavored cigars, but on the contrary were of small size and defective quality. The cigars advertised as a $2.50 bargain were not a blend of Havana and Connecticut tobaccos but instead were cigars the fillers of which are composed almost wholly of cheap, domestic tobacco originating in a State or States other than Connecticut, and containing, if any, only a negligible amount of real Havana filler. The oil silk tobacco pouch represented as being of a value of $2 has never possessed such value or ever sold at such price. The pipe represented to be of high quality imported virgin root briar of a value of $1 was not a briar pipe of such value, was not an imported pipe and was not of high quality. The tobacco represented in said combination offer as being of a regular value of 25 cents for 2 ounces has never had such value or ever sold at such price. The cigars of the respondents offered for sale at 3 cents each or 25 for 75 cents were not composed of genuine imported Havana tobacco, nor did they contain any appreciable amount of Havana tobacco or Connecticut shade-grown and broadleaf tobacco blended with Havana as a filler. Said cigars were not

over-runs or cigars put aside for slight imperfections, but on the contrary were regular run cigars made of cheap material including filler designed to sell at 3 cents each, and were not of 15-cent quality, and in no way conform to accepted standards of Havana blended cigars. The Lord Edwin Ambassador cigars which are sold at 3 cents each do not contain any appreciable amount of Havana tobacco and are not 10-cent grade cigars. Furthermore, said cigars are not of the same character and quality as those formerly sold as a 10-cent Havana cigar. The various cigars sold by the respondent at the price of 3 cents each are all of cheap and inferior quality and are not perfect cigars, fine, hand-made or blended with Havana, but in fact do not contain any appreciable amount of Havana tobacco and do not in any way conform to recognized standards employed by reputable manufacturers in the manufacture of Havana blended cigars, and are not of 10-cent quality.

The articles of merchandise, including cigars, which the respondent represents are given free or without charge are not free in any instance as the prices of the so-called "free items of merchandise" are included in the prices of the other articles of merchandise. The price paid by the purchaser is the regular price which would be paid for the combination of various items, including the so-called "free" goods. Furthermore, the items of merchandise are not of a value represented by the respondents. As an example, the 128-page illustrated book represented as selling for $2.50 is in fact a cheap, paper-back publication purchased by the respondent for 8 or 9 cents each.

In their advertising of cigars at inventory sales prices and off-season sales prices which show the regular price per hundred to indicate the so-called saving to the purchaser, the respondents designate as regular price per hundred prices for said cigars which are in fact fictitious, and prices at which respondents have never sold said cigars.

The respondent, Edwin Cigar Co., Inc., does not have or occupy an office building in New York, N. Y., or any such building as that pictured on its letterhead. On the contrary, said respondent rents only the ground floor and basement of a six-story building located at 100 E. Sixteenth Street. Said respondent, Edwin Cigar Co., Inc., is not an importer of tobacco leaf, but on the contrary purchases its leaf tobacco from a general stock carried by other dealers in tobacco leaf, and has never owned, and does not now own, any tobacco plantations or any warehouses in Havana, Cuba, Hartford, Conn., or Suffield, Conn., and does not charter or operate any steamships.

The respondent, House of Westminster, Ltd. does not now own, operate or control, and never has owned, operated, or controlled any steel company or steel plant. Said respondent does not manufacture and has never manufactured any steel razor or other blades, does not own or operate any razor blade machinery, does not temper, sharpen, or hone razor blades and does not sell direct from any factory to consumers or save any middleman's profit to the consumer on razor blades. On the contrary, the said Westminster razor blades so advertised, represented and sold by the respondent, House of Westminster, Ltd., are bought by said respondent from a blade manufacturing company located in the State of New York, said manufacturing company selling blades to respondent as orders are received therefor and also selling alike to drug stores and shaving supply companies generally throughout the United States.

PAR. 5. For many years craftsmen of England have specialized in the manufacture of pipes for use in smoking tobacco. Such craftsmen have become highly skilled in this work and English pipes have acquired and now possess, and for some time past have possessed, the reputation of being among the finest products of the pipemaker's skill. Many of the finest pipes, particularly those made of briar root, are made in England and are imported into the United States. Such pipes have long been considered as fine pipes and bear a reputation for excellence among pipe purchasers.

PAR. 6. For the purpose of misleading and deceiving members of the purchasing public, and to cause them to believe that the respondents are an English concern and deal exclusively in pipes and other smoking accessories from England, the respondents have adopted the following acts and practices in so making such representations:

1. The use of the corporate or trade name of "House of Westminster, Ltd."

2. The printing of the corporate name "House of Westminster, Ltd." on letterheads and other stationery in heavy Old English Gothic type.

3. The placing upon letterheads and other stationery, in addition to said corporate name, a pictorial representation of what appears to be the English coat-of-arms.

4. The placing on letterheads and other stationery of a pictorial representation of a gothic cathedral or abbey, harmonizing with the word "Westminster."

5. The use on letterheads and stationery of pictorial representations of English scenes of historical significance, such as Lord Nelson's monument in Trafalgar Square.

6. The use of English names in the various catalogs issued by the respondent, House of Westminster, Ltd., to designate or describe the pipes sold and distributed by the respondents, of which the following are examples: "Park Royal," "Lord Rochester," "The Britisher," "The Duke of Normandy," "The Duke of Windsor," "The Lancashire," and "Trafalgar Square."

7. The statement in their catalogue issued under the name of respondent, House of Westminster, Ltd., to the effect that said respondent will accept subscriptions for all English publications, together with a list of certain publications with prices as charged in the British Empire.

8. The use of British names to designate or describe certain pipe tobaccos in catalogues issued by the respondent, House of Westminster, Ltd., of which the following are examples:

"Belvedere London Plug Cut British Pipe Mixture"

with pictorial representation of a crown;

"House of Westminster British Mixture"

with pictorial representation of an English guardsman in uniform;

"Royal Guard Pipe Mixture"

with pictorial representation of mounted knights in armor carrying lances, and beneath this the word "British" and pictorial representation of a crown.

PAR. 7. In truth and in fact respondent, House of Westminster, Ltd., is not now and never has been a British company or branch or agent of any British company and is not now and never has been affiliated with any British company; does not represent all or any English publications, does not accept and has not accepted subscriptions to English publications and does not furnish and is not in a position to furnish information and subscription prices about the hundreds of magazines and newspapers printed in the British Empire. Numerous pipes branded, advertised and sold by respondent with distinctive British names were and are not English pipes imported from London or elsewhere in the British Empire; various pipes advertised in language indicating they were imported were and are not imported; various pipe mixtures sold under such labels as "Belvedere London Plug Cut," "House of Westminster Mixture," and "Royal Guard Pipe Mixture"

are not British tobacco or a blend or mixture of British tobacco or tobaccos originating in the British Empire, but consist instead almost wholly of various types and blends of pipe smoking tobacco grown in different States of the United States.

PAR. 8. The use by the respondents of the false, deceptive, and misleading statements and representations hereinabove set out, in connection with the offering for sale and sale of their said products, has had, and now has, the capacity and tendency to, and does, mislead and deceive, and has misled and deceived, many dealers and members of the purchasing public into erroneous and mistaken beliefs that said representations are true, and into the purchase of substantial quantities of respondents' products on account of said beliefs induced as above set out. As a result thereof, trade has been diverted unfairly to the respondents from competitors who are likewise engaged in the sale and distribution in commerce among and between the various States of the United States of cigars, tobacco, pipes and other smoking accessories, and who do not misrepresent the nature, character, quality, or price of their products, or the nature or size of the business conducted by them. In consequence thereof, injury has been done and is now being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce 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 6, 1940, issued and subsequently served its complaint in this proceeding upon each of the respondents, charging them with 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 formal answers by respondents Edwin Cigar Co., Inc., a corporation, House of Westminster, Ltd., a corporation, Max Rosenblum, Leonard R. Edwin, Jules M. Cole, and Mrs. Max Rosenblum, individuals, informal answers in the form of letters by respondents John Schwab, Ruth Hess, Charles Grothe, and Park G. Shaw, individuals (no answer having been filed by respondent Fredi Mannara), testimony and other evidence in sup-

port 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 Henry W. Steingarten, of counsel for respondents Edwin Cigar Co., Inc., House of Westminster, Ltd., Max Rosenblum, Leonard R. Edwin, Jules M. Cole, and Mrs. Max Rosenblum before Randolph Preston, an examiner of the Commission theretofore duly designated by it. During the progress of such hearings Henry W. Steingarten for and on behalf of the respondents represented by him, in open hearing, admitted for the purposes of this proceeding all the material allegations of fact contained in the complaint except subdivision 5 of paragraph 6 and denied the legal conclusion of the complaint. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, answers, testimony, admissions and other evidence, report of the trial examiner and exception of certain of the respondents thereto, and brief in support of the complaint (no brief having been filed by respondents 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. Respondent Edwin Cigar Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 100 East Sixteenth Street, New York, N. Y.

Respondent House of Westminster, Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 191 Fourth Avenue, New York, N. Y.

Respondent Leonard R. Edwin is the son of respondents Max Rosenblum and Mrs. Max Rosenblum and is an officer and director in respondents Edwin Cigar Co., Inc., and House of Westminster, Ltd.

Respondent Max Rosenblum is the father of respondent Leonard R. Edwin and for a period of years during the time alleged in the complaint was an officer of respondent Edwin Cigar Co., Inc., and a director of House of Westminster, Ltd.

Respondent Mrs. Max Rosenblum (otherwise known as Sadie Rosenblum) is the wife of respondent Max Rosenblum and mother

of respondent Leonard R. Edwin and was for a period of years alleged in the complaint an officer and director of respondent Edwin Cigar Co., Inc., and held stock of respondent House of Westminster, Ltd., as a nominee of respondents Leonard R. Edwin and Jules M. Cole.

Respondent Jules M. Cole is an officer and director of respondents Edwin Cigar Co., Inc., and House of Westminster, Ltd., and was during a period of time alleged in the complaint a partner or associate in Cigar Makers' Federation.

Respondents Fredi Mannara and John Schwab were, during a substantial portion of time alleged in the complaint, employees of respondent Edwin Cigar Co., Inc., and partners or associates in Cigar Makers' Federation.

Respondents Ruth Hess, Charles Grothe, and Park G. Shaw were, during a substantial portion of time alleged in the complaint, partners or associates in Cigar Makers' Federation.

PAR. 2. The respondents are now, and at various times mentioned in the complaint have been engaged in the sale and distribution of the products hereinafter named and have caused said products, when sold, to be transported to purchasers located in the several States of the United States and in the District of Columbia, and have maintained a constant course of trade and commerce in said products sold and distributed between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents have been, and are now, in active competition with various persons and partnerships and other corporations also engaged in the sale of similar articles of merchandise in commerce in various States of the United States and in the District of Columbia.

PAR. 4. Respondent Edwin Cigar Co., Inc., during a substantial part of the time alleged in the complaint has been engaged in the manufacture, sale, and distribution in commerce of cigars to consumers, both in its own name, and through the medium of the Cigar Makers' Federation, using said name in conjunction with respondents Jules M. Cole, Fredi Mannara, John Schwab, Ruth Hess, Park G. Shaw, and Charles Grothe.

Cigar Makers' Federation was a partnership or association composed of respondents Jules M. Cole, Fredi Mannara, John Schwab, Ruth Hess, Park G. Shaw, and Charles Grothe. It was organized by respondent Jules M. Cole and the policies, acts, and practices of said federation were controlled and directed by respondent Jules M.

Cole and respondent Edwin Cigar Co., Inc., and its officers and directors.

Respondent House of Westminster, Ltd., subsequent to its incorporation in the year 1937 has been, and is now, engaged in the sale and distribution in commerce of cigars, pipes, smoking tobacco, tobacco pouches, pipe and tobacco accessories, razor blades, shaving cream, and novelties. In connection with the aforesaid sale and distribution of razor blades this respondent has employed the trade name Westminster Steel Co.

During all or a portion of the time alleged in the complaint respondents Max Rosenblum, Mrs. Max Rosenblum, Leonard R. Edwin, and Jules M. Cole have owned and/or controlled and directed the policies, business, and affairs of both corporate respondents and, in conjunction and cooperation with the corporate and other individual respondents, have done and performed the acts and practices hereinafter set out.

PAR. 5. The corporate respondents and the individual respondents Max Rosenblum, Mrs. Max Rosenblum, Leonard R. Edwin, and Jules M. Cole, have in connection with the offering for sale, sale, and distribution of the aforesaid products, caused to be made by radio and by insertion in newspapers, magazines, catalogs and other media circulated in commerce, various representations with respect to the nature, quality, character, grade, and price of the said products. Typical of such representations are the following:

1. That Manila cigars, offered at a price of 1 cent each, are full-sized, full-bodied, fine-flavored cigars.

2. That cigars offered for sale as a $2.50 bargain for only 75 cents constitute a special offer and have the full-bodied, natural aroma of rich Havana and Connecticut blended tobaccos.

3. That an oil silk tobacco pouch of a regular value of $2, a high-quality imported virgin root briar pipe of a regular value of $1, and a sample 2-ounce bag or container of "Havana Picadura" tobacco of a regular value of 25 cents are being closed out at a combination or special price of $1.19.

4. That certain cigars offered at a "get acquainted" price of 25 for 75 cents or 3 cents each, are of guaranteed 15-cent quality and that such cigars are over-runs or cigars put aside for slight imperfections.

5. That certain cigars selling for 3 cents each are made of genuine imported Havana tobacco by the use of the words "GENUINE IMPORTED HAVANA" in a 1-column box printed in heavy display type, accompanied by the qualification:

The finest Conn. Shade-Grown and Broad-leaf tobaccos blended with

inconspicuously printed in small type;

6. That cigars offered in a close-out sale for 3 cents each are perfect, handmade Lord Edwin Ambassador cigars selling for 35 years at 10 cents each and contain the choicest tobaccos, including Havana.

7. That cigars priced at 2 cents each or 100 for $1.96 are perfect cigars, 5¼ inches in length, and are fine, handmade blended-with-Havana cigars, and equal in smoking satisfaction to cigars selling for 10 cents and more.

8. That certain items of merchandise such as a cigar lighter, a chrome metal pocket cigar case, a 128-page illustrated book selling in book shops at $2.50, a handsome pocket cigar case, and other articles, are given free with the purchase of a certain specified quantity of cigars or with the purchase of certain of respondents' pipes valued at $2.50 each.

9. That cigars are given "free of charge" in connection with the purchase of various lots of cigars.

10. That various lots of cigars are being sold at "inventory sales prices" and "off-season sales prices," opposite the sale prices of which are set out in parallel columns substantially higher prices designated as "regular price per hundred."

11. That the respondent, Edwin Cigar Co., Inc., occupies a large building as a factory and office, owns tobacco plantations and warehouses in Havana, Cuba, and in Hartford and Suffield, Connecticut, and that it is an importer of tobacco and controls the movement of cigar tobacco from the growing stage until sold as cigars to the ultimate consumer, which representations are made by means of pictorial representations appearing on letterheads, stationery, invoices, and other material, such as the picture of a 12-story building represented to be respondent's factory and office building, the picture of a tropical plantation scene and an ocean-going vessel, the picture of operators seated at a bench or table making cigars by hand, the picture of an executive smoking a cigar, and in addition, to such picturization there also appears the following legend:

"Manufacturers of High Grade Cigars

Importers, Dealers and Packers of Leaf Tobacco"

and to the right of said picturizations there also appears the following:

Leaf Tobacco Warehouses Havana, Cuba, Hartford, Conn. Suffield, Conn."

12. That respondents, House of Westminster, Ltd., owns, operates, and controls a steel company or steel plant wherein razor blades are manufactured for sale direct to the public.

PAR. 6. The respondents named in paragraph 5 hereof have engaged in acts, practices, and representations calculated to mislead and deceive and to induce purchasers or prospective purchasers to believe that respondent House of Westminster, Ltd., is a British concern dealing principally in pipes, and smoking accessories imported from England and have, by the means set forth in said paragraph 5, caused to be circulated in commerce representations with respect to respondent House of Westminster, Ltd., and with respect to the products offered for sale and sold by it, such as:

1. The use of the corporate name House of Westminster, Ltd., and the use of letterheads and other stationery bearing the corporate name "House of Westminster, Ltd.," printed in heavy Old English Gothic type.

2. The use of letterheads and other stationery bearing, in addition to said corporate name, a pictorial representation simulating the British Royal Coat of Arms.

3. The use of letterheads and other stationery bearing a pictorial representation of a Gothic cathedral or abbey harmonizing with the word "Westminster."

4. The use of English names in the various catalogs issued by the respondent, House of Westminster, Ltd., to designate or describe the pipes sold and distributed by the respondents, of which the following are examples: "Park Royal," "Lord Rochester," "The Britisher," "The Duke of Normandy," "The Duke of Windsor," "The Lancashire," and "Trafalgar Square."

5. The statement in their catalog issued under the name of respondent House of Westminster, Ltd., to the effect that said respondent will accept subscriptions for all English publications, together with a list of certain publications with prices as charged in the British Empire.

6. The use of British names to designate or describe certain pipe tobaccos in catalogs issued by the respondent House of Westminster, Ltd., of which the following are examples:

"Belvedere London Plug Cut British Pipe Mixture" with pictorial representation of a crown;

"House of Westminster British Mixture" with pictorial representation of an English guardsman in uniform;

"Royal Guard Pipe Mixture"

with pictorial representation of mounted knights in armor carrying lances, and beneath this the word "British" and pictorial representation of a crown.

PAR. 7. The representations made, of which those set out in paragraph 5 hereof, as well as others of similar import which are not specifically set out herein, are false, deceptive, and misleading.

In truth and in fact the Manila cigars advertised by the respondents were not full-sized, full-bodied, or fine-flavored cigars, but on the contrary were of small size and defective quality.

The cigars advertised as a $2.50 bargain for only 75 cents were not a blend of Havana and Connecticut tobaccos, but instead were cigars the fillers of which were composed almost wholly of cheap domestic tobacco originating in a State or States other than Connecticut and contained, if any, a negligible amount of Havana tobacco.

The oil silk tobacco pouch represented as a regular $2 value never possessed such value and never was sold at such price. The pipe represented to be of high quality imported virgin briar root of a value of $1 was not a briar pipe of such value, was not an imported pipe, and was not of high quality. The tobacco represented in combination offer with the tobacco pouch and pipe as having a regular value of 25 cents for 2 ounces has never had such value and never was sold at such price.

The cigars offered for sale on a "get acquainted" basis at 3 cents each or 25 for 75 cents were not composed, as represented, of the "finest Connecticut Shade-Grown and Broad-leaf tobaccos blended with GENUINE IMPORTED HAVANA," nor were they over-runs or cigars put aside for slight imperfections but, on the contrary, were cigars made of cheap material, were designed and manufactured to sell at 3 cents each, and were not of the 15-cent quality claimed. Furthermore, the cigars offered at 3 cents each were advertised by a 1-column box containing the words "Genuine Imported Havana" in display type, with the qualification thereof so inconspicuously stated in fine print as to mislead or deceive the public.

The "Lord Edwin Ambassador" cigars offered at 3 cents which were represented as having sold for 35 years at 10 cents each and as containing the choicest tobaccos, including Havana, do not contain any appreciable amount of Havana tobacco, are not 10-cent grade

cigars, and, furthermore, are not of the same character and quality as those formerly sold as a 10-cent Havana cigar.

The various cigars sold by respondents at the price of 3 cents each are all of cheap and inferior quality and are not perfect cigars, fine, hand-made, or blended with any substantial quantity of Havana tobacco, but in fact contain only a negligible amount of Havana tobacco, if any, and do not in any way conform to recognized standards employed by reputable manufacturers in the manufacture of Havana blended cigars, and are not of 10-cent quality.

The articles of merchandise, including cigars, which the respondents represented as given "free" are not free in any instance, as the prices of so-called "free" items of merchandise are included in the prices of other articles in conjunction with which they are offered. The price paid by the purchaser is the regular price which would be paid for the combination of various items, including the so-called "free" goods. The items of merchandise are not of the value represented by respondents. As an example, the 128-page illustrated book represented as selling for $2.50 is in fact a cheap paper-backed publication purchased by the respondent at a cost of 8 cents or 9 cents per copy.

The representations of so-called regular prices per hundred of cigars offered at "inventory sale prices" and "off-season sale prices" to indicate alleged savings to the purchaser are in fact fictitious, and cigars of this quality have not been sold by respondents at the so-called regular price.

The representations as to the size and content of business operations of respondents, including the physical properties owned, occupied, or operated, are grossly exaggerated. In fact respondents rent only the ground floor and basement of a six-story building located at 100 East Sixteenth Street, New York, N. Y., which premises have also been designated as 102 East Sixteenth Street, 34 Union Square, 190 Fourth Avenue, 191 Fourth Avenue, and 192 Fourth Avenue. Respondent Edwin Cigar Co. is not an importer of tobacco but, on the contrary, purchases its leaf tobacco from a general stock carried by dealers in tobacco leaf and has never owned, and does not now own, any warehouses in Havana, Cuba, or Hartford and Suffield, Conn., and does not charter or operate any steamships.

Respondent House of Westminster, Ltd., does not own, operate, or control any steel company or steel plant and does not manufacture, and has never manufactured, steel razor or other blades, does not own or operate any razor blade machinery, does not temper, sharpen, or hone razor blades, and does not sell such blades direct from factory to consumer or save the purchaser the middleman's profit on razor blades.

On the contrary, the so-called Westminster blades sold by respondent are bought by it from others.

PAR. 8. For many years English craftsmen have specialized in the manufacture of pipes for use in smoking tobacco and have become highly skilled in this work. English pipes have acquired and now possess, and for some time past have possessed, the reputation of being among the finest products of the pipemaker's skill. Many of the finest pipes, particularly those made of briar root, are made in England and are imported into the United States. Such pipes have long been considered to be fine pipes and bear a reputation for excellence among pipe purchasers.

In order to mislead and deceive and to cause members of the purchasing public to believe that respondent House of Westminster, Ltd., is an English concern dealing principally, if not exclusively, in pipes and other smoking accessories from England, the respondents referred to in paragraph 6 hereof adopted the acts and practices and made the representations set out therein when in truth and in fact respondent House of Westminster, Ltd., is not now, and never has been, a British company, or branch or agent of any British company, and is not now, and never has been, affiliated with any British company, does not represent all or any English publications, does not accept and has not accepted subscriptions to any English publications, and does not furnish and is not in a position to furnish information about and subscription prices of the many magazines and newspapers printed in the British Empire.

Numerous pipes branded, advertised, and sold by respondent with distinctively British names were not and are not British pipes imported from London or elsewhere in the British Empire. Various pipes advertised in language indicating they were imported were not and are not in fact imported.

Various mixtures of pipe tobacco offered for sale or sold under such labels as "Belvedere London Plug Cut British Pipe Mixture," "House of Westminster British Mixture," and "Royal Guard Pipe Mixture" with the word "British" appearing thereunder, accompanied by pictorial representations carrying implications of British origin, are not British tobacco or a blend or mixture of tobacco or tobaccos originating in the British Empire but consist almost entirely of various types and blends of pipe smoking tobacco grown in different States of the United States.

PAR. 9. The record in this proceeding affords no reason for believing that respondents Fredi Mannara, John Schwab, Ruth Hess, Charles

Grothe, and Park G. Shaw were more than workmen or employees of and acting under the control and direction of the other respondents.

PAR. 10. The use by respondents of the aforesaid false, deceptive and misleading acts and practices and the dissemination of the aforesaid false, deceptive and misleading statements and representations in connection with the offering for sale and sale of the various articles of merchandise named has had, and now has, the capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and implications are true. As a result thereof members of the purchasing public, because of such erroneous and mistaken belief, have purchased substantial quantities of said products and trade has been unfairly diverted to respondents from their competitors.

CONCLUSION

The aforesaid acts and practices of the respondents 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of all respondents except Fredi Mannara, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, including admissions made in open hearing for the purposes of this proceeding by counsel for respondents Edwin Cigar Co., Inc., House of Westminster Ltd., Max Rosenblum, Mrs. Max Rosenblum, Leonard R. Edwin, and Jules M. Cole, report of the trial examiner and exception of certain of the respondents thereto, brief filed by counsel for the Commission (counsel for 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 certain of said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Edwin Cigar Co., Inc., a corporation and House of Westminster, Ltd., a corporation, their officers, representatives, agents, and employees, respondents Max Rosenblum, Sadie Rosenblum (Mrs. Max Rosenblum), Leonard R. Edwin, and Jules

M. Cole, individuals, either jointly or severally, 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 cigars, pipes, smoking tobacco, pouches, pipe and tobacco products and accessories, razor blades, shaving cream, and novelties in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Representing that the nature, size or extent of respondents' business, including physical properties owned, occupied, or operated, is different from or greater than is the fact.

2. Representing as the customary or regular prices of articles of merchandise, prices which are in fact fictitious and in excess of the prices at which such articles of merchandise are regularly and customarily offered for sale or sold.

3. Representing that articles of merchandise, the cost of which is included in the purchase price of other merchandise in combination with which such articles are offered, are "free" or "included free," either by the use of the terms stated or other term or terms of similar import or meaning.

4. Representing that the usual and customary prices at which respondents sell or offer for sale articles or merchandise in the regular course of business are "inventory sale" prices, "off-season sale" prices, "introductory" prices or other special prices.

5. Representing that cigars of small size or defective quality are full-sized, full-bodied, and fine-flavored cigars, either by the use of the terms stated or other term or terms of similar import or meaning.

6. Using the term "Havana," or any other term or terms indicative of tobacco grown on the island of Cuba, either alone or in conjunction with any other terms, to describe, designate or in any way refer to cigars not made entirely from tobacco grown on the island of Cuba; except that cigars containing a substantial amount of tobacco grown on the island of Cuba may be described, designated, or referred to as "blended with Havana," or by any term of similar import or meaning, provided that the words "blended with," or other qualifying word or words, are set out in immediate connection or conjunction with the word "Havana," or other term indicative of tobacco grown on the island of Cuba, in letters of equal size and conspicuousness.

7. Using the fictitious name "Westminster Steel Co.," or otherwise representing that respondents, or any of them, manufacture the razor blades sold or offered for sale by them, or own, control, or operate any facilities for the manufacture of such blades, or that

purchasers of such blades receive the benefit of savings resulting from purchasing directly from the manufacturer.

8. Representing that respondents, or any of them, are importers of tobacco leaf.

9. Representing as being imported, either by the use of the word "imported" or in any other manner, merchandise which has not been actually imported from a foreign country.

10. Using the name "House of Westminster, Ltd.," as a corporate, trade or other name, or using any other distinctively British name to describe, designate, or refer to any business which is not a British concern or branch, or agent of or affiliated with a British concern; or using in connection with any such business, on letterheads, stationery, or otherwise, any pictorial representation simulating the British Royal Arms, or a Gothic cathedral or abbey, or any other representations of similar import or meaning.

11. Using the names "Park Royal," "Lord Rochester," "The Britisher," "The Duke of Windsor," "The Lancashire," or any other distinctively British names, to describe, designate, or refer to pipes not imported from England.

12. Using the names "Belvedere London Plug Cut British Pipe Mixture," with pictorial representation of a crown, "House of eWstminster British Mixture," with pictorial representation of an English guardsman in uniform, "Royal Guard Pipe Mixture" with pictorial representation of mounted knights in armor and beneath this the word "British" and pictorial representation of a crown, or any other distinctively British names, either separately or in conjunction with pictorial representations importing or implying British origin, to describe, designate, or refer to smoking tobaccos not imported from England.

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

It is further ordered, That the complaint be, and it is, hereby dismissed as to respondents Fredi Mannara, John Schwab, Ruth Hess, Charles Grothe, and Park G. Shaw.

IN THE MATTER OF

JOSEPH GLUCK & 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 4221. Complaint, Aug. 6, 1940—Decision, May 29, 1941

Where a corporation engaged in importing rugs and in competitive interstate sale and distribution thereof to various wholesale and retail dealers—

Made use of names "Kirman," "Irak," "Mossoul," or "Mosul" and "Karavan" to designate and describe their said products in invoices and in circulars to dealers and in otherwise referring thereto, and set forth designation "Kirman" conspicuously on labels attached to said "Kirman" rugs together with depiction of an Oriental scene, and on labels attached to its "Karavan" and "Irak" rugs set forth one or the other of those designations together with the familiar Turkish star and crescent and writing in what appeared to be Arabic, with the words "Made in France" in smaller type and on smaller labels on all such rugs;

Notwithstanding fact, the rugs in question, while they so closely simulated true Oriental rugs as to be indistinguishable therefrom by a large portion of the purchasing public, were not, as indicated and suggested by designations employed, and as long understood by a substantial portion of the purchasing public, those products made in the Orient and more particularly in certain parts of southwestern Asia, with pile of silk and wool, threads of which are knotted by hand in a special manner and which, because of their texture, beauty and durability, are decidedly preferred by many members of the purchasing public, but were woven on power looms at factories in France, of cotton or jute or a combination of both, and did not possess all the characteristics of genuine Orientals;

With capacity and tendency to mislead purchasers and prospective purchasers into the erroneous belief that the rugs thus designated were true Oriental rugs and to induce their purchase by reason thereof, and thereby to divert trade unfairly to it from competitors engaged in interstate sale of rugs of various kinds, both genuine Oriental and domestic, who truthfully represent their products, and with effect of placing in the hands of retail dealers means of misleading and deceiving the public, 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.

Diamond, Rabin, Botein & Mackay, 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 Joseph Gluck & 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, Joseph Gluck & 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 305 Seventh Avenue, city and State of New York.

PAR. 2. Respondent is now and has been for more than 2 years last past, engaged in the business of 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 between and among 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 products and the place or method of manufacture thereof, or 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 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. 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 members 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 said rugs, respondent has engaged in the practice of describing and designating certain of its rugs which closely resemble true Oriental rugs in appearance by the names of "Kirman," "Karavan," "Mossoul," and "Irak."

There are true Oriental rugs known as "Kirman," "Irak," and "Mossoul" or "Mosul" and the use by respondent of these designations has the capacity and tendency to create the mistaken and erroneous belief that the rugs so designated are in fact the genuine Oriental rugs of the same names. The use of the name "Karavan," which connotes the Orient, and is similar in sound to "Karaman" and "Gorevan," which are names of true Oriental rugs, has the capacity and tendency to induce the mistaken and erroneous belief that the rugs so designated are made in the Orient, by hand; and are in all respects, including materials, true Oriental rugs. Respondent uses said names to designate its said rugs in invoices and circulars to dealers, and in otherwise referring to the same in the sale thereof to dealers. To the rugs designated as "Kirman" are firmly attached labels upon which that name appears in connection with a depiction of an Oriental scene; to the rugs designated as "Karavan" and "Irak" are firmly attached labels upon which one or the other of said names appears in connection with a depiction of the familiar Turkish star and crescent, and a writing in what appears to be Arabic letters. All said labels are plainly discernible to members of the purchasing public when said rugs are displayed for sale by retail dealers.

In truth and in fact respondent's rugs referred to herein are woven on power looms at factories in France. They are not made by hand nor are individual threads knotted in the distinctive manner of the true Oriental rug. Said rugs are made either of cotton or of jute, or of the two combined. They do not possess all the characteristics of the true Oriental rug, but do, in fact, so closely simulate true Oriental rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public and are in consequence readily accepted as being true Oriental rugs.

PAR. 6. The use by respondent of the designations, depictions 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 pur-

chasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct, and that the rugs so designated and represented are true or genuine Oriental rugs, and to induce them to purchase said rugs on account thereof. Respondent's said acts and practices place 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 both genuine Oriental and domestic rugs, who truthfully represent their wares 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. 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 the 6th day of August 1940, issued and thereafter served its complaint in this proceeding upon said respondent, Joseph Gluck & 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. On the 27th 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 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 filing of a report upon the

evidence by the trial examiner, the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission upon 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, Joseph Gluck & 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 305 Seventh Avenue, city and State of New York.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of 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 between and among 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 products and the place or method of manufacture thereof, or 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 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. 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 members 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 said rugs, respondent has engaged in the practice of describing and designating certain of its rugs which closely resemble true Oriental rugs in appearance by the names of "Kirman," "Karavan," "Mossoul," and "Irak."

There are true Oriental rugs known as "Kirman," "Irak," and "Mossoul," or "Mosul" and the use by respondent of these designations has had the capacity and tendency to create the mistaken and erroneous belief that the rugs so designated were in fact the genuine Oriental rugs of the same names. The use of the name "Karavan," which connotes the Orient, and is similar in sound to "Karaman" and "Gorevan," which are names of true Oriental rugs, has had the capacity and tendency to induce the mistaken and erroneous belief that the rugs so designated were made in the Orient, by hand; and were in all respects, including materials, true Oriental rugs. Respondent has used said names to designate its said rugs in invoices and circulars to dealers, and in otherwise referring to the same in the sale thereof to dealers. To the rugs designated as "Kirman" were firmly attached labels approximately 6″ in length and 3″ in width, upon which the name "Kirman" conspicuously appeared in letters approximately ¾ inch in height, in connection with the depiction of an Oriental scene. Such labels were plainly discernible to members of the purchasing public when said rugs were displayed for sale by retail dealers. Also attached to said rugs were labels approximately 2⅝″ by 1¼″ upon which the words "Made in France" appeared in letters approximately 3/32″ in height. To the rugs designated as "Karavan" and "Irak" were firmly attached labels upon which one or the other of said names appeared in connection with a depiction of the familiar Turkish star and crescent and a writing in what appear to be Arabic letters. Such labels were plainly discernible to members of the purchasing public when said rugs were displayed for sale by retail dealers. Also attached to said "Karavan" and "Irak" rugs were labels approximately 4⅛″ in length by 2⅛″ in width upon which the words "Made in France" appeared in letters approximately ¼″ in height.

The respondent has not engaged in the practice aforesaid since on or about August 15, 1940.

In truth and in fact respondent's rugs referred to herein were woven on power looms at factories in France. They were not made by hand nor were individual threads knotted in the distinctive manner of the true Oriental rug. Said rugs were made either of cotton or of jute, or of the two combined. They did not possess all the characteristics of the true Oriental rug, but did, in fact, so closely simulate true Oriental rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public and were in consequence readily accepted as being true Oriental rugs.

PAR. 6. The use by respondent of the designations, depictions, and representations, as set forth herein, in connection with the offering for sale and sale of its said rugs has had the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations were true and correct, and that the rugs so designated and represented were true or genuine Oriental rugs, and to induce them to purchase said rugs on account thereof. Respondent's said acts and practices have had the effect of placing in the hands of retail dealers who purchased said rugs and resold the same to the purchasing public, means and instrumentalities of misleading and deceiving the public in the particulars aforesaid.

Respondent's said acts and practices have had the tendency and capacity to divert trade unfairly 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 both genuine Oriental and domestic rugs, who truthfully represent their wares as set forth in paragraph 3 hereof. In consequence thereof, injury has been 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, 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 facts and conclusion based thereon and order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Joseph Gluck & 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:

Using the words "Kirman," "Karavan," "Mossoul," "Irak," or any other words or names indicative of the Orient, or pictorial representations of a star and crescent simulating the Turkish emblem, or of other Oriental emblems, to mark, designate, describe, or refer to rugs not made in the Orient and which do not possess all the essential characteristics and structure of the type of Oriental rug which they purport to be.

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

WOOD & HYDE COMPANY

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

Docket 4235. Complaint, Aug. 14, 1940—Decision, May 29, 1941

Where a corporation engaged in the manufacture and interstate sale and distribution to glove manufacturers of capeskin and cabretta glove leather made by an improved and secret process of tanning the skin of the South African capeskin sheep and the Brazil cabretta, member of the sheep family, whereby there was produced instead of the theretofore heavy, coarse-appearing leather, one so similar in appearance to kid that only experts could distinguish gloves made therefrom from those made of genuine kid—

(*a*) Made use of trade name "Kinkid" in connection with the branding, labeling, advertising, and sale of its capeskin and cabretta leathers, with no indication on such leathers or in gloves made therefrom or in the advertising thereof of their true nature as produced from sheep skins and not from skins of young goats; and sold and shipped many of its best pieces, thus labeled, to glove manufacturers, various of whom it supplied with "Kinkid" transfer stamps to be used on the inside of gloves made from leathers in question; and

(*b*) With a view to creating consumer demand for "Kinkid" gloves, advertised its said capeskin and cabretta glove leathers extensively in various well-known and widely circulated magazines and in trade publications, and mailed reprints of magazine advertisements to department stores, which it also supplied with envelope stuffers, to be enclosed by them in letters to their customers;

Notwithstanding fact that said leathers were not the light weight, fine grain, thin and flexible leather, made from the skin of young goats, long favorably associated in minds of the consuming public with the word "kid" as applied to leather and the more costly and preferred gloves made therefrom, but were made, as aforesaid, from the skins of the South African capeskin sheep and Brazil cabretta;

With effect of leading a substantial portion of the consuming public into the mistaken belief that gloves made from said last named leathers were made from genuine kidskin, and with consequence, as result of such belief, that members of such public were induced to buy substantial quantities of its said "Kinkid" products, and with further effect of placing in the hands of manufacturers and retailers means whereby they might mislead and deceive the purchasing public as to the true origin and character of 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. Merle P. Lyon for the Commission.

Mr. James H. Wood, of Gloversville, 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 Wood & Hyde Co., a corporation, hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Wood & Hyde Co. is a New York Corporation, having its principal office and place of business in the city of Gloversville, State of New York. It is now, and for some time past has been, engaged in the manufacture of capeskin and cabretta glove leathers and in the sale and distribution thereof between and among the various States of the United States and in the District of Columbia. Said respondent causes said glove leathers, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in a State or States other than that in which said shipments have their origin. 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. "Kid" gloves are made from the skin of the young of goats, usually a sucking animal, or one which is killed before it grazes or feeds on grass. The leather is light weight and fine grained, naturally thin and flexible, and is used exclusively for ladies' dress gloves. The word "kid" or any compound word composed in part of the word "kid" or any phrase containing the word "kid," has had for many years, and still has, in the minds of the consuming public generally, a definite and specific meaning, to wit, a product made from the skin of a young goat. Gloves which are made from genuine kidskins are known as kid gloves or "real kid" gloves. "Kid" gloves for many years have held, and still hold, great public esteem and confidence for their preeminent qualities of fine appearance, delicate grain, light weight, and flexibility. The cost of producing genuine kid gloves greatly exceeds the cost of producing gloves from the skins of sheep, and the general public has a decided preference for kid gloves over gloves produced from the skins of sheep or similar animals.

"Capeskin" leather, of which gloves are also made, is made from the skin of a South African haired sheep found in the vicinity of

Capetown, South Africa, from which it takes its name. Another glove leather known as "cabretta" is produced from the skin of a straight-haired sheep found in Brazil. Formerly capeskin and cabretta leathers, due to the inferior method of processing and tanning, had a heavy and coarse appearance and gloves made from such leathers met considerable sales resistance from women customers. About 5 years ago, the respondent began tanning such skins by an improved and secret process which produces a leather so similar in appearance to that of kid that only experts can distinguish gloves made by such leathers from those made of genuine kid.

PAR. 3. Respondent herein has been engaged in the tanning and manufacture of glove leather since 1890. The company specializes in skins from straight-haired sheep known in the trade as capeskins, because they come from Capetown, South Africa, though some of its skins are purchased in Brazil, being taken from the animal known as the cabretta, which also belongs to the sheep family. The tanning of these skins is done at respondent's factory at Gloversville, N. Y. After the skins are tanned they are sold to glove manufacturers in various States of the United States.

The trade name "KinKid" is employed by respondent in connection with the branding, labeling, advertising and sale of its products made from and known as "capeskin" and "cabretta." Each piece of leather sold and shipped to a glove manufacturer bears the "KinKid" label, and various glove manufacturers using respondent's glove leathers are supplied with KinKid transfer stamps to be used in stamping the name "KinKid" on the inside of gloves manufactured by them from such products.

In the further course and conduct of its said business in connection with the sale and distribution of its "capeskin" and "cabretta" glove leathers, respondent has promoted the sale thereof by extensive advertising over a period of 5 years or more last past with a view to creating consumer demand for "KinKid" gloves. Advertisements have appeared in various well-known and widely circulated women's magazines and in trade publications. Direct advertising is done with department stores by mailing them reprints of magazine advertisements. Department stores are also supplied with envelope stuffers which they enclose with letters to their customer members of the consuming public.

PAR. 4. KinKid leathers and gloves are marketed with no indication thereon or in the advertising thereof that they are in fact produced from sheepskins and not from the skins of the suckling or immature young of goats. The use of the trade name "KinKid"

by respondent in labeling, branding, advertising and describing its leathers and gloves produced from the skins of sheep is misleading and deceptive and has the capacity and tendency to, and does, lead a substantial portion of the consuming public into the mistaken and erroneous belief that such gloves are made from genuine kidskin. As a result of such erroneous and mistaken belief so engendered members of the consuming public have been induced to purchase substantial quantities of respondent's said "KinKid" products.

The said acts and practices of respondent, as aforesaid, have placed in the hands of manufacturers, department stores, and retailers instruments whereby they may mislead and deceive members of the purchasing public as to the true origin and character of said products and, by reason of such deception, into the purchase of the same.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 14, 1940, issued and subsequently served its complaint in this proceeding upon said respondent Wood & Hyde 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 4th day of September 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 said respondent and by James H. Wood, attorney of record for said 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. Respondent expressly waived the filing of report upon the evidence by a trial examiner but reserved the right to file a brief in opposition to the allegations of the complaint and to have oral argument before the Commission in this case.

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, briefs in support of the complaint and in opposition thereto, and 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, Wood & Hyde Co., is a New York corporation having its principal office and place of business in the city of Gloversville, State of New York. It is now, and for some time past has been, engaged in the manufacture of capeskin and cabretta glove leathers and in the sale and distribution thereof between and among the various States of the United States and in the District of Columbia. Said respondent causes said glove leathers, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in a State or States other than that in which said shipments have their origin. 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. "Kid" gloves are made from the skin of the young of goats, usually a sucking animal, or one which is killed before it grazes or feeds on grass. The leather is light weight and fine grained, naturally thin and flexible, and is used chiefly for ladies' dress gloves. The word "kid," or any compound word composed in part of the word "kid" or any phrase containing the word "kid," has had for many years, and still has, in the minds of the consuming public generally, a definite and specific meaning, to wit, a product made from the skin of a young goat. Gloves which are made from genuine kidskins are known as kid gloves or "real kid" gloves. "Kid" gloves for many years have held, and still hold, great public esteem and confidence for their preeminent qualities of fine appearance, delicate grain, light weight, and flexibility. The cost of producing genuine kid gloves greatly exceeds the cost of producing gloves from the skins of sheep, and the general public has a decided preference for kid gloves over gloves produced from the skins of sheep or similar animals.

"Capeskin" leather, of which gloves are also made, is made from the skin of a South African haired sheep found in the vicinity of Capetown, South Africa, from which it takes its name. Another glove leather known as "cabretta" is produced from the skin of a straight-haired sheep found in Brazil. Formerly capeskin and

cabretta leathers, due to the inferior methods of processing and tanning, had a heavy and coarse appearance and gloves made from such leather met considerable sales resistance from women customers. About 5 years ago, the respondent began tanning such skins by an improved and secret process which produces a leather so similar in appearance to that of kid that only experts can distinguish gloves made of such leather from those made of genuine kid.

PAR. 3. Respondent herein has been engaged in the tanning and manufacture of glove leather since 1890. The company specializes in skins from straight-haired sheep known in the trade as capeskins, because they come from Capetown, South Africa, though some of its skins are purchased in Brazil, being taken from the animal known as the cabretta, which also belongs to the sheep family. The tanning of these skins is done at respondent's factory at Gloversville, N. Y. After the skins are tanned they are sold to glove manufacturers in various States of the United States.

The trade name "Kinkid" is employed by respondent in connection with the branding, labeling, advertising, and sale of part of its products made from and known as "capeskin" and "cabretta." Many of the best pieces of its leather sold and shipped to glove manufacturers bear the "Kinkid" label, and various glove manufacturers using respondent's glove leathers are supplied with Kinkid transfer stamps to be used in stamping the name "Kinkid" on the inside of gloves manufactured by them from such products.

In the further course and conduct of its said business in connection with the sale and distribution of its "capeskin" and "cabretta" glove leathers, respondent has promoted the sale thereof by extensive advertising over a period of five years or more last past with a view to creating consumer demand for "Kinkid" gloves. Advertisements have appeared in various well-known and widely circulated women's magazines and in trade publications. Direct advertising is done with department stores by mailing them reprints of magazine advertisements. Department stores are also supplied with envelope stuffers which they enclose with letters to their customer members of the consuming public.

PAR. 4. Kinkid leathers and gloves are marketed with no indication thereon or in the advertising thereof that they are in fact produced from sheepskins and not from the skins of the suckling or immature young of goats. The use of the trade name "Kinkid" by respondent in labeling, branding, advertising and describing its leathers and gloves produced from the skins of sheep is misleading and deceptive and has the capacity and tendency to, and does, lead

a substantial portion of the consuming public into the mistaken and erroneous belief that such gloves are made from genuine kidskin. As a result of such erroneous and mistaken belief so engendered, members of the consuming public have been induced to purchase substantial quantities of respondent's said "Kinkid" products.

The said acts and practices of respondent, as aforesaid, have placed in the hands of manufacturers, department stores and retailers the means whereby they may mislead and deceive members of the purchasing public as to the true origin and character of said products and, by reason of such deception, into the purchase of the same.

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 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 the respondent, and a stipulation as to the facts entered into by the respondent herein and W. T. Kelley, chief counsel for the Commission, briefs filed in support of the complaint and in opposition thereto and oral arguments of counsel, 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, Wood & Hyde 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 glove leathers and other similar products in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "kid" or by any other words of similar import and meaning, either alone or in combination with any other word or words, in advertising or otherwise, to describe, designate, or refer to any leather product which is not made from the skin of a young goat.

2. Using the term "Kinkid" or any other term which includes the word "kid" or any colorable simulation thereof, or using any other term of similar import or meaning on labels, or otherwise, to de-

scribe, designate, or refer to any leather product which is not made from the skin of a young goat.

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

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

LEON HOOD, trading as ST. JOSEPH SCHOOL OF FLYING. Complaint, June 19, 1940. Order, December 11, 1940. (Docket 4167.)

Charge: Advertising falsely or misleadingly as to Government connections, free product or service, and undertakings, opportunities in and results from product or service, and as to approval and standing thereof, and plant, equipment, personnel, and nature of organization or business; in connection with the sale of aviation correspondence courses.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the respondent has now discontinued and abandoned the sale of home study courses in aviation, that respondent has removed himself from within the boundaries of the United States of America, and that his present place of residence is unknown and upon diligent inquiry cannot be ascertained, 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. Merle P. Lyon for the Commission.

GENERAL BAKING CO. Complaint, December 17, 1938. Order, December 13, 1940. (Docket 3669.)

Charge: Discriminating in price between purchasers in different trade areas or localities buying products of like grades and qualities, in violation of section 2 (a) of Clayton Act, as amended by Robinson-Patman Act; in connection with the manufacture and sale of bread.

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. William C. Reeves* and *Mr. John J. Keenan*, trial examiners.

Mr. James I. Rooney and *Mr. John T. Haslett* for the Commission.

Simpson, Thacher & Bartlett, of New York City, for respondent.

RAY THOMSON, trading as T. A. REYNOLDS & CO. and as THOMAS REY CO.; and RAY THOMSON and GLENN BROWN doing business as JEAN LOWE COSMETIC CO. Complaint, April 21, 1938. Order, December 20, 1940. (Docket 3384.)

Charge: Misrepresenting as to circumstances of offer, special introductory advertising prices and plan, value and quality of product, and guaranteed earnings of solicitors; in connection with the sale of toilet preparations, cosmetics, and flavoring extracts and other household novelties and notions.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Federal Trade Commission upon the record, and it appearing that the respondent Glenn Brown is now deceased and the respondent Roy Thomson, incorrectly named in the complaint as "Ray," has been convicted on a charge of using the mails to defraud and is now serving a penal sentence of 4 years, 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 further facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Before *Mr. E. J. Hornibrook* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Morton Nesmith for the Commission.

Mr. Harry I. Hannah, of Mattoon, Ill., for respondents.

BOURJOIS, INC., BARBARA GOULD SALES CORP. ET AL. Complaint, May 26, 1939.[1] Order, December 27, 1940. (Docket 2972.)

Charge: Discriminating in price between different purchasers of their said commodities of like grade and quality by giving and allowing to certain purchasers, from the retail list prices of such commodities, varied price discounts more favorable than given or allowed to other purchasers, in violation of section 2 (a) of Clayton Act, as amended by Robinson-Patman Act; and contracting to furnish, furnishing, and contributing to the furnishing to some but not all of its purchasers, the services and facilities of special personnel or

[1] Amended and supplemental.

"demonstrators," in violation of section 2 (e) of above act, and in violation of section 5 of the Federal Trade Commission Act; in connection with the manufacture and sale of cosmetics and toilet preparations.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Federal Trade Commission upon the record and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the complaint herein be and the same hereby is dismissed without prejudice.

Before *Mr. John W. Addison* and *Mr. John L. Hornor*, trial examiners.

Mr. Robt. N. McMillen, *Mr. E. P. Schrup*, *Mr. James I. Rooney*, *Mr. Frank Hier* and *Mr. P. R. Layton* for the Commission.

Olvany, *Eisner & Donnelly*, of New York City, for respondents.

COTY, INC., ET AL. Complaint, May 15, 1939.[1] Order, December 27, 1940. (Docket 2975.)

Charge: Contracting to furnish, furnishing and contributing to the furnishing to some but not all of its purchasers, the services and facilities of special personnel or "demonstrators," in violation of section 2 (e) of Clayton Act, as amended by Robinson-Patman Act, and in violation of section 5 of the Federal Trade Commission Act; in connection with the manufacture and sale of cosmetics and toilet preparations.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Federal Trade Commission upon the record and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the complaint herein be and the same hereby is dismissed without prejudice.

Before *Mr. John W. Addison* and *Mr. John L. Hornor*, trial examiners.

Mr. Robt. N. McMillen, *Mr. E. P. Schrup*, *Mr. James I. Rooney*, *Mr. Frank Hier*, and *Mr. P. R. Layton* for the Commission.

Coudert Brothers and *Mr. Lewis G. Bernstein*, of New York City, for respondents.

HASTINGS MANUFACTURING CO. Complaint, February 10, 1940. Order, December 27, 1940. (Docket 4030.)

Charge: Cutting off competitors' access to customers or market by "lifting" competitive products in hands of jobber customers, through

[1] Amended and supplemental.

cash, credit, and loans; subsidizing business through guaranteeing gross profits to prospective jobber customers; and advertising falsely or misleadingly as to comparative merits of own and competitive products; in connection with the manufacture of piston rings and sale thereof under the trade name "Steel Vent."

Dismissed, after answer and trial, by the following order:

This matter coming on for consideration on the record and the Commission having duly considered the same and being now fully advised in the premises;

It is ordered, That this proceeding be, and the same hereby is, dismissed without prejudice.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. W. T. Chantland for the Commission.

Beaumont, Smith & Harris, of Detroit, Mich., for respondent.

ZISBLATT FURNITURE CO., INC., trading as GRAND RAPIDS FURNITURE SHOW ROOMS; and MORRIS ZISBLATT, MEYER ZISBLATT, SAM ZISBLATT, LILLIAN ZISBLATT, and A. MACCIA. Complaint, July 31, 1940. Order, December 31, 1940. (Docket 4206.)

Charge: Advertising falsely or misleadingly and misrepresenting as to business status, size, and plant, dealer being manufacturer and wholesaler, direct from factory to you dealing, prices and source or origin of product; in connection with the sale of household furniture.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the corporate respondent Zisblatt Furniture Co., Inc., has become bankrupt and is no longer engaged in business, that all efforts to serve the complaint herein on respondents Morris Zisblatt, Lillian Zisblatt, and A. Maccia have been unsuccessful, and that they have no permanent residences or places of business and their present locations are unknown, 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. Randolph W. Branch for the Commission.

AMERICAN DRUG AND CHEMICAL CO. Complaint, July 26, 1940. Original findings and order, September 19, 1940. Docket 4200, 31 F. T. C. 943. Order vacating, etc., January 8, 1941.

Charge: Advertising falsely or misleadingly as to qualities, properties, or results of products; in connection with the the sale of drug preparations designated Ardanol, Chloro-Zol and Germ-I-Tabs.

Findings as to the facts and order to cease and desist in this case were vacated by the following order:

This matter coming on before the Commission for consideration, and it appearing that on August 27, 1940, the respondent herein executed and submitted an answer in which it admitted all of the material allegations of the complaint, and that on September 19, 1940, the Commission, acting on the complaint and answer herein, issued its Findings as to the Facts and Conclusion and its Order to Cease and Desist based thereon, and it further appearing that respondent executed and submitted such answer by reason of a misunderstanding as to the full import thereof, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the Findings as to the Facts and Order to Cease and Desist issued by the Commission on September 19, 1940 be, and they are hereby, vacated and set aside;

It is further ordered, That respondent be, and it hereby is, permitted to withdraw its answer dated and filed on August 27, 1940, and to file a substitute answer in lieu thereof on or before 20 days from the date of service of this order on it.

Mr. R. P. Bellinger for the Commission.

P. F. Collier and Son Corp. Complaint, January 14, 1939. Order, January 9, 1941. (Docket 3687.)

Charge: Offering deceptive inducements to purchase through pretended lucky drawing, free products, offers at cost, combination sale bargains, and special and limited introductory, advertising, and other pretended reduced price offers and pretexts; in connection with offer and sale of encyclopedias and reference books, and yearly supplements or revision services.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record herein, and it appearing to the Commission that the respondent corporation has been dissolved, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. Floyd O. Collins for the Commission.

White & Case, of New York City, and *Mr. William I. Denning*, of Washington, D. C., for respondent.

ROBESON-ROCHESTER CORP. Complaint, April 26, 1940. Order, January 11, 1941. (Docket 4120.)

Charge: Misbranding or mislabeling as to approval, endorsement, sponsorship, or use; in connection with manufacture and sale of "Scout" pocket knives.

Dismissed by the following order:

This proceeding coming on to be heard by the Commission on the record and it appearing to the Commission that the respondent corporation is out of business and was dissolved on December 28, 1939, 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. Joseph C. Fehr for the Commission.

CARD CLOTHING MANUFACTURERS' ASS'N ET AL. Complaint December 23, 1936. Order, January 17, 1941. (Docket 3019.)

Charge: Combining and conspiring to restrain price competition through continuing code price filing plan employed under National Industrial Recovery Act; in connection with manufacture and sale of card clothing.

Dismissed, after answers and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and upon briefs and oral argument, both in support of the allegations of the complaint and in opposition thereto, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice.

Before *Mr. John J. Keenan*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mowitz & Kohlhas, of Philadelphia, Pa., and *Mr. George P. Lamb*, of Washington, D. C., for respondents generally, and, along with—

C. J. & J. F. Mahoney, of Lawrence, Mass., for Merrimac Card Clothing Co.; and

Mr. Edward C. Bowers and *Mr. Charles L. Feldman* (Receivers), of New York City, for Wickwire-Spencer Steel Co.

CROWELL-COLLIER PUBLISHING CO., P. F. COLLIER AND SON CORP., AND THEIR OFFICERS AND DIRECTORS. Complaint, November 8, 1940. Order, January 17, 1941. (Docket 4372.)

Charge: Offering deceptive inducements to purchase through pretended lucky drawing, free products, offers at cost, combination sale bargains, and special and limited introductory, advertising, and other

pretended reduced price offers and pretexts; in connection with offer and sale of encyclopedias and reference books, and yearly supplements or revision services.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the petition of respondents that the complaint herein be dismissed, and it appearing from said petition that the respondents had not engaged in the unfair practices alleged in the complaint for a considerable period of time prior to the issuance of the complaint, and that respondents Crowell-Collier Publishing Co., a corporation, and P. F. Collier & Son Corporation, a corporation, have executed agreements to abide by the Trade Practice Conference rules for the Subscription and Mail Order Book Publishing Industry, promulgated by the Commission on September 3, 1940, and that they have since the promulgation of said rules complied therewith in all respects, and the Commission having duly considered said petition and the record herein, and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. Floyd O. Collins for the Commission.

White & Case, of New York City, for respondents.

AERO INDUSTRIES TECHNICAL INSTITUTE, INC. Complaint, March 30, 1939. Order, January 22, 1941. (Docket 3750.)

Charge: Advertising falsely or misleadingly as to personnel or staff, organization, connections, and standing of business, and as to size and equipment and unique nature thereof, and as to opportunities in product or service; in connection with sale of home study courses in modern aircraft construction and allied fields.

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 now being 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 in accordance with its regular procedure.

Before *Mr. John J. Keenan* and *Mr. William C. Reeves*, trial examiners.

Mr. Merle P. Lyon and *Mr. William M. King* for the Commission.

Murchison & Clopton, of Los Angeles, Calif., and *Brewster & Steiwer*, of Washington, D. C., for respondent.

MARCHANT CALCULATING MACHINE CO., and DWIGHT R. COOKE. Complaint, December 12, 1939. Order, February 11, 1941. (Docket 3970.)

Charge: Disparaging competitor and its product as to qualities, business status and equipment, quality, patent infringements, trade-in value, source or origin and financial responsibility; in connection with the manufacture and sale of calculating machines.

Record closed, after answers, 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 further facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. Wilbur N. Baughman for the Commission.

Mr. Harrison S. Robinson and *Mr. Wallace W. Knox*, of Oakland, Calif., for respondents.

GULF REFINING CO. Complaint, April 2, 1938. Order, February 12, 1941. (Docket 3371.)

Charge: Disparaging and misrepresenting competitive products as to qualities, properties or results, and cutting off competitors' sources of supply; in connection with the production and sale of refined and "re-refined" lubricating oils.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the motion of counsel for the respondent to dismiss the complaint herein and the Commission having duly considered the said motion and the record herein, and being now fully advised in the premises;

It is ordered, That said motion be granted and that the complaint herein be, and the same hereby is, dismissed.

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

Mr. Gerald A. Rault for the Commission.

Mr. Frederick E. Greer, *Mr. Alex F. Smith*, and *Mr. J. S. Atkinson*, of Shreveport, La., for the respondent.

CLOVER FARM STORES CORP. and THE LANE LEASE CO. Complaint, October 5, 1940. Order, February 12, 1941. (Docket 4334.)

Charge: Receiving and accepting from sellers, upon sales to member or wholesaler stock owners of said Clover Corporation, made through or negotiated by its subsidiary, Lane Lease Co., sums of money or so-called brokerage fees or commission; in violation of Section 2 (c) of the Clayton Act as amended by the Robinson-Patman

Act; in connection with purchase and sale of food and grocery products.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the complaint of the Commission and upon the motion herein filed by the respondents for an order dismissing the complaint, or in the alternative for an order closing this proceeding without prejudice to the right of the Commission to reopen the same should the facts so warrant, and it appearing that the respondent The Lane Lease Co., an Ohio corporation and wholly owned subsidiary of the respondent Clover Farm Stores Corporation, has been duly dissolved subsequent to the issuance of the complaint herein, pursuant to certificate of voluntary dissolution filed in the office of the Secretary of State of the State of Ohio on December 21, 1940; and that the brokerage business heretofore conducted by respondent The Lane Lease Company has been completely terminated and liquidated as of December 23, 1940; and respondent Clover Farm Stores Corporation having certified to the Commission that the said dissolution and liquidation of respondent The Lane Lease Co. has been made in good faith and that Clover Farm Stores Corporation has not assumed and does not intend to assume the business of The Lane Lease Co. nor to engage in the business of food broker, either directly or indirectly, and does not intend in any manner hereafter to engage in the business practices described in the complaint; and it appearing that there is no reason to believe or anticipate that the respondents, or either of them, will hereafter engage in or resume any of the violations of law alleged in the complaint; and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That this proceeding 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 of the case in accordance with its regular procedure.

Mr. Cyrus B. Austin for the Commission.

Mr. Samuel G. Wellman, of Cleveland, Ohio, for respondents.

LOUIS BASKIND AND CO., INC. Complaint, April 22, 1940. Order, February 17, 1941. (Docket 4095.)

Charge: Misbranding or mislabeling and misrepresenting product as to grade, quality, manufacture, results and composition; in connection with the manufacture and sale of shirts.

Record closed with the following order:

This matter coming on for consideration by the Commission upon the record and it appearing that the respondent, Louis Baskind and

Co., Inc., a corporation has not been engaged in any manufacturing or selling activity since December 1938 and that it has been in liquidation since December 1938 and the corporate respondent will be dissolved as soon as the remaining physical assets are distributed to the stockholders thereof, 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. J. R. Phillips, Jr., for the Commission.

Mr. Maurice H. Bob (Liquidator of the Estate), of New York City, for respondent.

ROYAL METAL MANUFACTURING CO. Complaint, April 25, 1940. Order, February 17, 1941. (Docket 4107.)

Charge: Advertising falsely or misleadingly, misbranding or mislabeling, and using misleading name as to composition of product, in connection with the manufacture and sale of household, office and trade furniture.

Dismissed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Mr. William M. King for the Commission.

Wallace & Cannon, of Chicago, Ill., for respondent.

NU-AGE CO. Complaint, July 12, 1940. Order, March 4, 1941. (Docket 4186.)

Charge: Advertising falsely or misleadingly as to qualities, properties and results through periodicals, radio broadcasts, circulars, etc., including reproduction of purported testimonial letters; in connection with the sale of a medicinal preparation known as "Nu-Age," and also described as "Natural Mineral Extract."

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record and it appearing that the respondent, Nu-Age Co., a corporation, has not been engaged in the sale and distribution of the medicinal preparation known as "Nu-Age" since August 1939, and that the respondent corporation's license to do business was cancelled on April 26, 1940, by law of the State of Oklahoma, and that service

of the complaint has not been made upon 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 trial thereof in accordance with its regular procedure.

Mr. J. R. Phillips, Jr., for the Commission.

Mr. George W. Reed, Jr., of Tulsa, Okla., for respondent.

INTER-STATE RIBBON & CARBON CORP. Complaint, June 28, 1940. Order, March 8, 1941. (Docket 4171.)

Charge: Advertising falsely or misleadingly as to dealer being manufacturer, time in business and composition; in connection with the sale of typewriter ribbons and carbon paper.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record and upon briefs, both in support of the allegations of the complaint and in opposition thereto, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice.

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

Mr. Jesse D. Kash for the Commission.

Selzer & Roemisch, of Cleveland, Ohio, for respondent.

UNION CONCESSION CO. Complaint, August 23, 1940. Order, March 11, 1941. (Docket 4263.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture of candy and sale of candy and other merchandise.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that respondent Union Concession Co., a corporation, was dissolved on January 30, 1941, 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. W. W. Sheppard*, trial examiner.

Mr. D. C. Daniel for the Commission.

Mr. Morris A. Haft, of Chicago, Ill., for respondent.

W. HILLYER RAGSDALE, INC. Complaint, November 20, 1940. Order, March 19, 1941. (Docket 4383.)

Charge: Advertising falsely or misleadingly as to profits, opportunities, and undertakings; in connection with the sale of courses of study and instruction in the home manufacturing of candy and certain supplies required in connection with the manufacture of candy.

Dismissed, after answer, by the following order:

This matter coming on to be heard by the Commission, and it appearing that the respondent was incorporated under the laws of the State of New Jersey on June 4, 1932, that its charter was forfeited for nonpayment of State taxes on January 13, 1937, and that the respondent was not in existence when the complaint was issued and served, 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. D. E. Hoopingarner for the Commission.

CASENBURG CROWE, trading as SOUTHERN MANUFACTURING CO. and FACTORY-TO-YOU CO. Complaint, January 24, 1939. Order, March 20, 1941. (Docket 3692.)

Charge: Misrepresenting product as made-to-measure or made-to-order, and terms and conditions, using misleading trade name as to dealer being manufacturer and factory-to-you dealings and failing to fill orders in conformance with samples; in connection with the sale of men's clothing through salesmen or agents.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record and it appearing that the respondent Casenburg Crowe was not an independent operator trading as Southern Manufacturing Co. and Factory-To-You Co., but was an employee of Harper Manufacturing Co. and Rome Manufacturing Co., who are not corespondents herein, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

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

Mr. B. G. Wilson for the Commission.

Mr. Barry Wright, of Rome, Ga., for respondent.

MOVIE COSMETICS CORP., and W. K. MAX HASSENSTEIN, individually and as president thereof. Complaint, August 5, 1939. Order, March 20, 1941. (Docket 3864.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to unique nature, history of product, and as to use, standing, and indorsement and approval thereof; in connection with the sale of cosmetics, including hair waving preparations and devices.

Record closed, after trial, by the following order:

This matter coming on to be heard by the Commission upon the record and the trial examiner's report upon the evidence, 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. Miles J. Furnas*, trial examiner.

Mr. L. E. Creel, Jr., and *Mr. E. P. Schrup* for the Commission.

HERSHEL CALIFORNIA FRUIT PRODUCTS CO., INC. Complaint, September 28, 1939. Order, March 20, 1941. (Docket 3901.)

Charge: Misbranding or mislabeling as to domestic product being imported, and prize or awards, in connection with the sale of tomato paste.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Federal Trade Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same is hereby, dismissed without prejudice to the Commission's right to reopen the same and resume trial thereof in accordance with its regular procedure.

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

Mr. S. Brogdyne Teu, II, for the Commission.

Hackley & Hursh, of San Francisco, Calif., for respondent.

MOSKIN STORES, INC. Complaint, January 24, 1939. Order, March 29, 1941. (Docket 3693.)

Charge: Advertising falsely or misleadingly and offering deceptive inducements to purchase as to additional product or products free; in connection with sale of men's and women's clothing and wearing apparel and other articles.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, it appearing to the Commission that the charges in the com-

plaint are not 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. Lewis C. Russell*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Hays, St. John, Abramson & Schulman, of New York City, for respondent.

CONSOLIDATED BOOK PUBLISHERS, INC. Complaint, June 21, 1938. Order, April 10, 1941. (Docket 3465.)

Charge: Misrepresenting nature of manufacture and value of product; in connection with the sale of books.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice.

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

Mr. Jay L. Jackson for the Commission.

Campbell, Clithero & Fischer, of Chicago, Ill., for respondent.

SAKS AND CO. Complaint, June 16, 1938. Original order, April 3, 1940. Docket 3456, 30 F. T. C. 898. Order setting aside, etc., April 15, 1941.

Charge: Advertising falsely or misleadingly as to prices, style, design or type and composition, nature and quality of products; in connection with the sale of women's dresses, fur coats and other wearing apparel.

Cease and desist order in this case was set aside and issuance of modified order directed by the following order:

This matter coming on to be heard by the Commission, and it appearing that the parties hereto, on March 28, 1941, executed a stipulation by the terms of which the respondent Saks and Co. agreed to dismiss its petition for review (then pending in the United States Circuit Court of Appeals for the Second Circuit) of the order to cease and desist issued by the Commission herein under date of April 3, 1940, and that the Commission, in turn, agreed, upon dismissal of said petition for review, to set aside its said order to cease and desist; and in lieu thereof to make, enter and serve upon the respondent a modified order to cease and desist, as provided

in said stipulation; and said Circuit Court of Appeals, on April 2, 1941, upon motion of said respondent (petitioner in said Court), having entered its order dismissing said petition for review; and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the said order to cease and desist, issued by the Commission herein on April 3, 1940, be, and the same hereby is, set aside;

And it is further ordered, That the modified order to cease and desist, as set forth in said stipulation of March 28, 1941, be entered in lieu of said order of April 3, 1940, and be served upon the respondent herein, as provided in said stipulation.[1]

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

Mr. Robert Mathis, Jr., for the Commission.

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

J. O. DAVIES, trading as BABY TOUCH HAIR REMOVER CO. Complaint, January 3, 1940. Order, April 19, 1941. (Docket 3986.)

Charge: Advertising falsely or misleadingly as to nature and qualities, properties and results of product; in connection with the manufacture and sale of a hair removing device designated as "Baby Touch Hair Remover."

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, briefs in support of the allegations of the 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;

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Clark Nichols and *Mr. Jesse D. Kash* for the Commission.

Mr. Thomas E. Gillespie, of St. Louis, Mo., for respondent.

ADOLPH KARL AND GERTRUDE KARL, individually and trading as A. & G. KARL CO. Complaint, March 2, 1940. Order April 19, 1941. (Docket 4014.)

Charge: Advertising falsely or misleadingly as to nature and qualities, properties and results of product; in connection with the manufacture and sale of a cosmetic preparation designated "Never Break", intended for application to the nails.

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[1] See *ante*, p. 1184.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having fully considered the same and being now fully advised in the premises;

It is ordered, That the complaint herein be and the same hereby is, dismissed without prejudice.

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

Mr. Maurice C. Pearce for the Commission.

NATIONAL CAPITAL ICE INSTITUTE ET AL. Complaint, November 10, 1939. Order, April 22, 1941. (Docket 3946.)

Charge: Concertedly fixing and maintaining uniform minimum prices, and disparaging competitors and their products as to quality and financial stability, to suppress, prevent, and eliminate competition; in connection with the manufacture and sale of ice.

Dismissed, after answer, by the following order:

This matter coming on for further consideration by the Commission, and it appearing from a supplemental investigation that, subsequent to the conclusion of the Commission's original investigation, but before its complaint issued, the corporate trade association, namely, National Capital Ice Institute, which was the central agency through which the complained of acts and practices were set in motion and directed, closed its office, discharged its officers and employees and ceased to function or operate; and it appearing further that no resumption of its activities has occurred up to this time; and it also appearing that since some time prior to such cessation of activities and operation and up to the present time there has been substantial and sharp competition between and among respondents, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That this case be, and the same hereby is dismissed, but without prejudice to the right of the Commission to take other or further action in accordance with its regular procedure whenever facts shall so warrant.

Mr. Wm. T. Chantland for the Commission.

Mr. William E. Leahy, of Washington, D. C., for National Capital Ice Institute, Morris W. Bennett and Consolidated Terminal Corp., and along with *Mr. Robert Henry Hunter*, of Washington, D. C., for James P. Ehrman.

Mr. Albert V. Bryan, of Alexandria, Va., for Harry Hammond and Mutual Ice Co.

Mr. W. Cameron Burton, of Washington, D. C., for William A. Brooks and Christian Heurich Brewing Co.

Mr. Michael F. Keogh, of Washington, D. C., for Migiel J. Uline and M. J. Uline Co.

Mr. Walter L. Dilger, of Chicago, Ill., for Edward J. Smith.

Coe & Richards, of Washington, D. C., for M. E. Thompson and American Ice Co.

WHOLESALE RADIO SERVICE CO., INC., OF NEW YORK ET AL. Complaint, February 25, 1939. Order, May 9, 1941. (Docket 3722.)

Charge: Advertising falsely or misleadingly as to dealers being wholesalers and their goods as offered at wholesale prices; in connection with the sale of radio receiving sets, radio tubes, radio parts and general goods, wares and merchandise by mail order.

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 complaint herein should be dismissed, the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice 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 P. Bramhall*, *Mr. Lewis C. Russell*, and *Mr. Arthur F. Thomas*, trial examiners.

Mr. Carrel F. Rhodes for the Commission.

Carb, Reichman & Luria, of New York City, for respondents.

COMPRESSED AIR INSTITUTE ET AL. Complaint, November 24, 1939. Order, May 21, 1941. (Docket 3958.)

Charge: Fixing concertedly by zones uniform prices throughout the United States; exchanging price lists and submitting invoices and other information with intent and effect of maintaining uniform zone prices and submitting concertedly uniform bids and otherwise carrying out understandings, etc., with intent of restricting and monopolizing trade and eliminating competition; in connection with sale and delivery of compressed air machinery and pneumatic tools.

Dismissed, after answer and stipulation, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice.

Mr. George W. Williams for the Commission.

Rounds, Dillingham, Mead & Neagle and *Hughes, Richards, Hubbard & Ewing*, of New York City, and *Davies, Richberg, Beebe, Busick & Richardson*, of Washington, D. C., for respondents.

UNITED STATES QUARRY TILE CO. Complaint, October 17, 1936. Order, May 28, 1941. (Docket 2951.)

Charge: Discriminating in price in violation of subsection 2 (a) of the Clayton Act as amended by the Robinson-Patman Act; in connection with the manufacture and sale of tile.

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 record does not establish that respondent, United States Quarry Tile Co., has discriminated in price between purchasers competitively engaged as alleged, 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. John W. Norwood* and *Mr. John J. Keenan*, trial examiners.

Mr. James I. Rooney and *Mr. William L. Pencke* for the Commission.

Covington, Burling, Rublee, Acheson & Shorb and *Marshall & Forrer*, of Washington, D. C., and *Cable & Cable*, of Lima, Ohio, for respondent.

Mr. Francis V. LaRuffa, of Brooklyn, N. Y., for Eastern Tile Wholesalers Association, Inc., intervenor.

SUPERIOR CERAMIC CORP. Complaint, August 20, 1938. Order, May 28, 1941. (Docket 3546.)

Charge: Discriminating in price in violation of subsection 2 (a) of section 1 of the Clayton Act as amended by the Robinson-Patman Act; in connection with the manufacture and sale of tile.

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 record does not establish that respondent, Superior Ceramic Corp., has discriminated in price between purchasers competitively engaged as alleged, 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. John J. Keenan*, trial examiner.

Mr. James I. Rooney for the Commission.

Pence, O'Neill & Diven, of Anderson, Ind., and *Covington, Burling, Rublee, Acheson & Shorb* and *Marshall & Forrer*, of Washington, D. C., for respondent.

Mr. Francis V. LaRuffa, of Brooklyn, N. Y., for Eastern Tile Wholesalers Association, Inc., intervenor.

TRENT TILE CO., INC. Complaint, August 22, 1938. Order, May 28, 1941. (Docket 3547.)

Charge: Discriminating in price in violation of subsection 2 (a) of section 1 of the Clayton Act as amended by the Robinson-Patman Act; in connection with the manufacture and sale of tile.

Dismissed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the complaint of the Commission and the answer of respondent, Trent Tile Co., Inc., and it appearing that the said respondent has been duly adjudicated a bankrupt and that said respondent has been dissolved, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same is hereby, dismissed.

Mr. James I. Rooney for the Commission.

Mr. I. Herbert Levy, of Trenton, N. J., for Donald H. Benedict, Trustee in Bankruptcy of Trent Tile Co., Inc.

MOSAIC TILE CO. Complaint, August 22, 1938. Order, May 28, 1941. (Docket 3548.)

Charge: Discriminating in price in violation of subsection 2 (a) of section 1 of the Clayton Act as amended by the Robinson-Patman Act; in connection with the manufacture and sale of tile.

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 record does not establish that respondent, Mosaic Tile Co., has discriminated in price between purchasers competitively engaged as alleged, 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. John J. Keenan*, trial examiner.

Mr. James I. Rooney for the Commission.

Mr. James Russell Murphy, Covington, Burling, Rublee, Acheson & Shorb and *Marshall & Forrer*, of Washington, D. C., for respondent.

Mr. Francis V. LaRuffa, of Brooklyn, N. Y., for Eastern Tile Wholesalers Association, Inc., intervenor.

C. PARDEE WORKS, MATAWAN TILE CO. and PARDEE MATAWAN TILE CO. Complaint, August 22, 1938.[1] Order, May 28, 1941. (Docket 3549.)

Charge: Discriminating in price in violation of subsection 2 (a) of section 1 of the Clayton Act as amended by the Robinson-Patman Act; in connection with the manufacture and sale of tile.

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 record does not establish that respondents, C. Pardee Works, Matawan Tile Co., and Pardee Matawan Tile Co., have discriminated in price between purchasers competitively engaged as alleged, and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the complaint, as amended, herein be, and the same hereby is, dismissed.

Before *Mr. John J. Keenan*, trial examiner.

Mr. James I. Rooney for the Commission.

Marshall & Forrer, of Washington, D. C., for respondents, and along with *Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., for Matawan Tile Co.

Mr. Francis V. LaRuffa, of Brooklyn, N. Y., for Eastern Tile Wholesalers Association, Inc., intervenor.

WENCZEL TILE CO. Complaint, August 23, 1938. Order, May 28, 1941. (Docket 3550.)

Charge: Discriminating in price in violation of subsection 2 (a) of section 1 of the Clyaton Act as amended by the Robinson-Patman Act; in connection with the manufacture and sale of tile.

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 record does not establish that respondent, Wenczel Tile Co., has discriminated in price between purchasers competitively engaged as alleged, 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. John J. Keenan*, trial examiner.

[1] Amended by stipulation approved October 10, 1938.

Mr. James I. Rooney for the Commission.

Covington, Burling, Rublee, Acheson & Shorb and *Marshall & Forrer*, of Washington, D. C., for respondent.

Mr. Francis V. LaRuffa, of Brooklyn, N. Y., for Eastern Tile Wholesalers Association, Inc., intervenor.

WHEELING TILE CO. Complaint, August 23, 1938. Order, May 28, 1941. (Docket 3551.)

Charge: Discriminating in price in violation of subsection 2 (a) of section 1 of the Clayton Act as amended by the Robinson-Patman Act; in connection with the manufacture and sale of tile.

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 record does not establish that respondent, Wheeling Tile Co., has discriminated in price between purchasers competitively engaged as alleged, 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. John J. Keenan*, trial examiner.

Mr. James I. Rooney for the Commission.

Covington, Burling, Rublee, Acheson & Shorb and *Marshall & Forrer*, of Washington, D. C., for respondent.

Mr. Francis V. LaRuffa, of Brooklyn, N. Y., for Eastern Tile Wholesalers Association, Inc., intervenor.

ARCHITECTURAL TILING CO., INC. Complaint, August 24, 1938. Order, May 28, 1941. (Docket 3552.)

Charge: Discriminating in price in violation of subsection 2 (a) of section 1 of the Clayton Act as amended by the Robinson-Patman Act; in connection with the manufacture and sale of tile.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is. dismissed.

Before *Mr. John J. Keenan*, trial examiner.

Mr. James I. Rooney for the Commission.

Gettinger & Gettinger, of New York City, and *Covington, Burling, Rublee, Acheson & Shorb* and *Marshall & Forrer*, of Washington, D. C., for respondent.

Mr. Francis V. LaRuffa, of Brooklyn, N. Y., for Eastern Tile Wholesalers Association, Inc., intervenor.

NATIONAL TILE CO., INC. Complaint, August 24, 1938. Order, May 28, 1941. (Docket 3553.)

Charge: Discriminating in price in violation of subsection 2 (a) of section 1 of the Clayton Act as amended by the Robinson-Patman Act; in connection with the manufacture and sale of tile.

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 record does not establish that respondent, National Tile Co., Inc., has discriminated in price between purchasers competitively engaged as alleged, 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. John J. Keenan*, trial examiner.

Mr. James I. Rooney for the Commission.

Covington, Burling, Rublee, Acheson & Shorb and *Marshall & Forrer*, of Washington, D. C., for respondent.

Mr. Francis V. LaRuffa, of Brooklyn, N. Y., for Eastern Tile Wholesalers Association, Inc., intervenor.

STIPULATIONS [1]

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST [2]

2819.[3] **Greeting Cards—Free Samples or Products.**—Merwin B. Grogan, sole trader, as M. B. Grogan Co., engaged in the sale and distribution of greeting cards in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Merwin B. Grogan, in connection with his sale and distribution of greeting cards or other merchandise in commerce as defined by said Act, agreed to cease and desist from advertising "free samples," or any other use of the word "free" or similar expression in a manner purporting a gift or gratuity only, where any consideration such as payment of money, rendering of services, or otherwise, is required of the person receiving articles of merchandise sent in response to his request for such free samples or other gratuity; and from inducing a customer to order samples or other goods by deceptively concealing the terms of the transaction. (Jan. 23, 1941.)

2822.[3] **Greeting Cards—Free Samples or Products.**—Southern Greeting Card Co., a Tennessee corporation, engaged in the sale and distribution of greeting cards in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships like-

[1] For false and misleading advertising stipulations effected through the Commission's radio and periodical division, see p. 1743 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, December 1, 1940, to May 31, 1941, inclusive. Digests of previous stipulations of this character accepted by the Commission may be found in vols, 10 to 31 of the Commission's decisions.

[2] In the interest of brevity there is omitted from the published digests of the published stipulations agreements under which the stipulating respondent or respondents, as the case may be, agree that, should such stipulating respondent or respondents ever resume or indulge in any of the practices, methods, or acts in question, or in event of issuance by Commission of complaint and institution of formal proceedings against respondent, as in the stipulation provided, such stipulation and agreement, if relevant, may be received in such proceedings as evidence of the prior use by the respondent or respondents of the methods, acts, or practices herein referred to.

[3] Modified.

wise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Southern Greeting Card Co., in connection with its sale and distribution of greeting cards or other merchandise in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from advertising "free samples", or any other use of the word "free" or similar expression in a manner purporting a gift or gratuity only, where any consideration such as payment of money, rendering of services, or otherwise, is required of the person receiving articles of merchandise sent in response to his request for such free samples or other gratuity; and from inducing a customer to order samples or other goods by deceptively concealing the terms of the transaction. (Jan. 17, 1941.)

2824.[1] **Greeting Cards—Free Samples or Products.**—Edith M. Schwer, executrix of the estate of Charles C. Schwer, deceased, operating under the trade name Charles C. Schwer, engaged in the sale and distribution of greeting cards in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Edith M. Schwer, individually and as executrix of the estate of Charles C. Schwer, deceased, in connection with the sale and distribution of greeting cards in commerce as defined by said act, agreed to cease and desist from advertising "free samples", or any other use of the word "free" or similar expression in a manner purporting a gift or gratuity only, where any consideration such as payment of money, rendering of services, or otherwise, is sent in response to his request for such free samples or other gratuity; and from inducing a customer to order samples or other goods by deceptively concealing the terms of the transaction. (Jan. 13, 1941.)

2825.[1] **Greeting Cards and Christmas Package Wrappings—Free Samples or Products.**—John A. Hertel Co., an Illinois corporation, engaged in the sale and distribution of greeting cards and Christmas package wrappings in interstate commerce in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

John A. Hertel Co., in connection with its sale and distribution of greeting cards or other merchandise in commerce as defined by

[1] Modified.

the Federal Trade Commission Act, agreed it will cease and desist from advertising "free samples", or any other use of the word "free" or similar expression in a manner purporting a gift or gratuity only, where any consideration such as payment of money, rendering of services, or otherwise, is required of the person receiving articles of merchandise sent in response to his request for such free samples or other gratuity; and from inducing a customer to order samples or other goods by deceptively concealing the terms of the transaction. (Jan. 17, 1941.)

3004. **Mirror Products—Nature of Manufacture.**—Gillespie Furniture Co., a corporation, engaged in the business of manufacturing furniture including mirrors, 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.

Gillespie Furniture Co., in connection with the advertisement, sale or distribution of its mirror products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the words "copper plating on the back" as descriptive of said mirrors, and from the use of the said words or of any other 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 mirrors are backed with genuine metallic copper applied by the electrolytic process, when in fact they are not so backed. (Dec. 2, 1940.)

3005. **Silverware—Nature, Quality, and Source or Origin.**—Crown Silver Co., Inc., a corporation, engaged in the business of manufacturing copies or reproductions of Sheffield silverware and in the sale thereof in interstate commerce, in competition with other corporations, and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

In England there exists an outgrowth of the Guild System which requires that articles made of silver be submitted to Goldsmith Hall where such articles are assayed. If and when such articles of silver as are assayed are found to be of the standard prescribed, the Hall causes certain marks to be stamped upon the article. These marks and imprints, called hall-marks, so placed on the article, indicate the place and year of manufacture. The practice of using hall-marks in England dates back several centuries. These well known and understood hall-marks, when impressed upon the silver, convey to the pur-

chasing public the information that the article of silverware is Old English and of ancient origin, and Old English Silverware and Sheffield Plate that have been manufactured and stamped and imprinted with the genuine English hall-mark have for many years enjoyed widespread popularity, good will and demand among the using public throughout the United States, many of whom believe and consider that Old English Silverware and Sheffield Plate bearing the genuine English hall-mark is superior in quality and other desirable characteristics, including antiquity, to silverware manufactured in the United States; and many of the using and purchasing public throughout the United States purchase Old English Silverware and Sheffield Plate bearing the imprint of the English hall-mark, which silverware has been imported into the United States, in preference to silverware manufactured in the United States.

Crown Silver Co., Inc., in connection with the sale or distribution of silverware in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist—

1. From representing its product as "Hall-Marked" or using or causing to be used or aiding or abetting others to use upon or in connection with such silverware, an English hall-mark, or any hall-mark, stamp, brand, label, or other mark or device which simulates or imitates an English hall-mark, unless such silverware has been manufactured in England and has been submitted to Goldsmith's Hall of England and has met the standards prescribed thereby for use of the English hall-mark.

2. From in any way using or causing to be used, or aiding or abetting others to use or cause to be used, upon or in connection with such silverware any mark, stamp, brand, or other device which represents or indicates directly or by implication that such silverware has been manufactured in England or has been submitted to Goldsmith's Hall of England, or has met the tests or requirements prescribed by Goldsmith's Hall of England, or is silverware of a certain hall-mark, grade, quality, standard, design or manufacture, when such is not true in fact. (Dec. 5, 1940.)

3006. Mattresses, Upholstered Furniture, Etc.—Composition, Old Material as New, Law Compliance, Etc.—Morris Stein and Morris Nierenberg, copartners, trading under the name and style "Colorado Mattress Manufacturing Company," engaged in the business of manufacturing mattresses and other articles of bedding, Commercial felt and upholstered furniture, and in the sale thereof 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.

Morris Stein and Morris Nierenberg, in connection with the labeling, tagging or other advertising of their products which are offered for sale, sold or distributed in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from—

1. Designating, or describing or representing said products which are made, either in whole or in part, of used or second-hand material to be products made of or containing all new material.

2. Failing to clearly and unequivocally disclose that said products are composed, either in whole or in part as the case may be, of used or second-hand material.

3. Representing that said products are made in compliance with the laws of the State of Colorado, or of any other State, or that they or the materials used as filler therefor have been subjected to a cleansing process so as to be free from dirt or other extraneous matter, when in fact, said products are not made so as to conform to such law or laws and have not been cleaned as represented. (Dec. 10, 1940.)

3007. **Mattresses—Composition, Old Materials as New, Law Compliance, Etc.**—Harry Malneck, an individual, trading as American Mattress Manufacturing Co., engaged in the business of manufacturing mattresses and in the sale and distribution thereof in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Harry Malneck, in connection with the labeling, tagging, or advertisement of his products offered for sale, sold or distributed in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from—

1. Failing to clearly and unequivocally disclose that said products which are made, either in whole or in part, of used or second-hand materials are in fact made of or actually do contain materials which have been used or are second-hand.

2. Representing that said products are made in compliance with Colorado bedding laws, or the laws of any other State, or that they have been thoroughly cleaned and renovated, that is to say, restored to a state of freshness by cleaning, when in fact, said products are not made so as to conform to such laws and have not been thoroughly cleaned and renovated, as represented. (Dec. 10, 1940.)

3008. **Milk Pellets and Poultry Feed Mixes—Composition and Qualities.**—Arcady Farms Milling Co., a corporation, engaged in the business of manufacturing various feed mixes for poultry, including such a

product known as "Wonder Live Milk Pellets," 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.

Arcady Farms Milling Co., 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 term "Live Milk" as a trade name or designation for its products, and from the use of the words "live milk" or "milk" in any way so as to import or imply or which may tend to create the impression or belief that said products are composed of milk, that is to say, the fresh, clean, lacteal secretion such as is obtained in the pure or native state from a milk-producing animal.

2. The use of any statement or representation which imports or implies or the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that there are such quantities of beneficial bacteria present in said products sufficient to have any therapeutic effect, or that there is scientific basis for the representation that putrefactive bacteria will cause all the dire consequences recited in the advertising referred to in paragraph 2 hereof, or that the presence of so-called beneficial bacteria will alleviate such conditions. (Dec. 10, 1940.)

3009. **Mattresses, Pillows, Etc.—Composition, Old Materials as New, and Law Compliance.**—Colorado Bedding Co., a corporation, engaged in the manufacture of mattresses, pillows, and other articles of bedding, 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.

Colorado Bedding 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 from—

1. Designating or describing or representing said products which are made, either in whole or in part, of used or second-hand materials to be products made of or containing all new materials.

2. Failing to clearly and unequivocally disclose that said products are composed, either in whole or in part as the case may be, of used or second-hand materials.

3. Representing that said products are made in compliance with the laws of the State of Colorado, or any other State, when in fact

said products are not made so as to conform to such laws or law. (Dec. 10, 1940.)

3010. **Mattresses, Studio Couches, Etc.—Composition, Old Materials as New, and Prices.**—Sam Moskin, an individual, trading as Mountain States Mattress Manufacturing Co., engaged in the business of manufacturing mattresses, studio couches, and related products, and also in the renovation of such products, and in the sale of such products in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Sam Moskin, in connection with the labeling or other advertisement of his products offered for sale, sold or distributed by him in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from—

1. Failing to clearly and unequivocally disclose that said products are composed, either in whole or in part as the case may be, of used or second-hand material.

2. Designating or describing or representing said products which are made, either in whole or in part, of used or second-hand materials to be products made of or containing all new material.

3. The use on or in connection with said products of any false, fictitious, or misleading price representation which purports to be the retail sales price of said products but which, in fact, is in excess of the price for which said products are customarily sold in the usual course of retail trade. (Dec. 12, 1940.)

3011. **Mattresses, Upholstered Furniture, Etc.—Composition, Old Material as New, Law Compliance, and Sterilized.**—Kindel Bedding Co., a corporation, engaged in the business of manufacturing mattresses, bedding, commercial felt and upholstered furniture, 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.

Kindel Bedding Co., in connection with the labeling, tagging, or other advertisement of its products offered for sale, sold or distributed in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from—

1. Designating or describing or representing said products which are made, either in whole or in part, of used or second-hand material to be products made of or containing all new material.

2. Failing to clearly and unequivocally disclose that said products are composed, either in whole or in part as the case may be, of used or second-hand material.

3. Representing that said products are made in compliance with the Colorado laws or with the laws of any other State or that said products are sterilized, when in fact, said products are not made so as to conform to a law or laws and have not been subjected to a sterilization process. (Dec. 13, 1940.)

3012. **Mattresses, Etc.—Composition, Old Material as New, and Prices.**—Abe D. Penn an individual, trading as National Bedding Co. engaged in the business of manufacturing articles of bedding, including mattresses of the loose centers, felt, and spring-filled types, and in the sale of said products in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Abe D. Penn, in connection with the labeling, tagging, or other advertisement of his products which are offered for sale, sold, or distributed in commerce as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from

1. Designating or describing or representing, said products which are made, either in whole or in part, of used or second-hand materials to be products made of or containing all new material.

2. Failing to clearly and unequivocally disclose that said products are composed, either in whole or in part as the case may be, of used or second-hand material.

3. The use on or in connection with said products of any false, fictitious or misleading price representation which purports to be the retail sales price of said products, but which, in fact, is in excess of the price for which said products are customarily sold in the usual course of retail trade. (Dec. 16, 1940.)

3013. **Neckties and Other Men's Wear—Composition.**—Kramer-Brandeis, Inc., a corporation, engaged in the business of manufacturing neckties and other men's wear 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.

Kramer-Brandeis, Inc., in connection with the advertisement, labeling, 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 "llama" or the picturization

of a llama, either alone or in connection 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 said merchandise is composed either in whole or in substantial part of llama wool or hair. (Dec. 18, 1940.)

3014. **Raw Furs—Business Status.**—E. A. Stephens & Co., Inc., a corporation, engaged in the purchase of raw furs from trappers and dealers in commerce between and among various States of the United States, in competition with other concerns 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.

E. A. Stephens & Co., Inc., in connection with the conduct of its aforesaid business 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 or printed matter, or in any other way, of the picturization of any building, either alone or in connection with its corporate or trade name, or in any other manner, the effect of which tends or may tend to convey the impression or belief to customers or prospective customers that it occupies and conducts its business from such building, when such is not the fact. (Dec. 17, 1940.)

3015. **Shoes—Domestic as Imported.**—John E. Lucey Shoe Co., and Leonard & Barrows Shoe Co., two corporations having same officers and a single place of business, 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.

John E. Lucey Shoe Co. and Leonard & Barrows Shoe Co., 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 to cease and desist from representing, as through the use of the words "London, England" or the word "British" that their domestically made products are British products; and from the use of the said quoted words, or any thereof, or of any other word or words of similar implication, as a mark, stamp, brand, or label for said products or in any other way, so as to import or imply or the effect of which tends or may tend to convey the belief that said products have been imported from London, England, where they were made or manufactured. (Dec. 20, 1940.)

3016. **Mothproof Preparation—Qualities, Properties, and Results.**—Bernhardt Peterson, an individual, trading as Berlou Manufacturing Co., engaged in the manufacture of an alleged mothproof preparation and in the sale thereof under the trade designation "Berlou" 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.

Bernhardt Peterson, in connection with the advertisement, offering for sale, sale, or distribution of his product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the word "permanent" or "life-time" or of any other word or words of similar implication, as descriptive of the protection against moths allegedly afforded to fabrics treated with said product, and from the use of the word "permanent" or "life-time" or of any other word or words, 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 forever. (Dec. 23, 1940.)

3017. **Foot Preparations—Institute, Certificate, Clinic, Qualities, Prices, Source or Origin, Etc.**—William Newman, a sole trader as Newman Products Co. and as The Newman Institute, engaged in the sale and distribution of medicinal preparations designated "Williams KornX," "Williams Foot Balm," "Williams Foot Shampoo," and "Williams Foot Powder," in interstate commerce between and among the various States of the United States, 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.

William Newman, in connection with the offering for sale, sale, and distribution of his medicinal preparations in commerce as defined by the Federal Trade Commission Act, agreed he will cease and desist from:

1. The use of the word "Institute" as part of or in connection with his trade name; or the use of the word "Institute" or any similar word or words in any manner so as to import or imply that he is associated with or directs an organization conducted for the promotion of medical science or learning, or maintains a trained medical or scientific staff and a properly equipped laboratory for the conduct of scientific research and experimentation pertaining to diseases of the feet and the treatment thereof.

2. Issuing any so-called "Certificate" or similar document in which representations are made that the bearer or any person whose name is

written or inscribed thereon has completed a course of study, has received or passed an examination in chiropody or any other course, or is qualified to lecture or advise concerning foot health or care.

3. Representing, by use or display of signs or placards bearing the words "Foot Health Clinic" or "Foot Health Remedy" or otherwise, that his salesmen or agents are conducting clinics or are qualified to conduct clinics or examine and treat patients, or that his products are competent remedies for maladies, diseases, or ailments of the feet generally.

4. Representing as the customary or regular prices of his products, prices which are fictitious and in excess of prices at which such products are customarily sold or offered for sale in the usual course of business.

5. Representing by direct statement or by reasonable inference, either in his advertising media or by statements by his canvassing salesmen or agents, or otherwise:

(*a*) That his commodities were manufactured by or purchased from J. B. Williams Co.; that his business is connected with that of the said J. B. Williams Co. in any way, or that he or his salesmen or agents are employed by or otherwise are connected with said company.

(*b*) That any of the said preparations offered for sale or sold by him is a competent remedy or an effective treatment for athlete's foot, swollen ankles, or ingrown toenails, or for tired, aching, burning or swollen feet generally.

(*c*) That any of such preparations constitutes a speedy, prompt or permanent cure or remedy for corns, callosities, or warts or prevents their recurrence; stops pain quickly; or relieves pain or soreness incident to bunions, ingrown toenails, athlete's foot, swollen ankles, or diseases or ailments of the feet generally.

(*d*) That the use or application of such preparations will result in the relief or alleviation of headaches, backaches, or fatigue, or the pain or discomfort incident thereto. (Jan. 2, 1941.)

3018. **Scarves and Neckties—Composition.**—Trabulsi Textile Co., Inc., a New York corporation, engaged in the sale and distribution of men's neckwear, including weighted silk scarves and neckties, 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.

Trabulsi Textile Co., Inc., in connection with the sale and distribution of its neckwear in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from selling or

offering for sale any silk product which contains any metallic weighting without full and nondeceptive disclosure, in or on 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, of the presence of such metallic weighting, together with the proportion or percentage thereof, as, for example, "Silk with 55% Metallic Weighting" or "Silk, Weighted up to 55%," with the word "weighting" and the percentage thereof printed in conspicuous type. (Jan. 2, 1941.)

3019. **Comforters, Etc.—Nature of Manufacture and Composition.**—L. Buchman Co., Inc., a New York corporation, engaged in the manufacture of comforters and other related items containing feathers and down, 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. Buchman 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 it will cease and desist from stating or representing, as through the use of the words "handcrafters," "handmakers," or of any other word or words of similar implication or meaning, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that said products are hand-made or hand-stitched. Said corporation also agrees to cease and desist from selling or offering for sale its products which are composed of or contain rayon without clear and unequivocal disclosure of the fact that said products are composed of or contain rayon, in the invoices and labeling and in all advertising matter, sales promotional descriptions, or representations thereof, however disseminated or published. (Jan. 2, 1941.)

3020. **Dental Plate Cleansing Product—Nature of Product.**—New Jersey Pulverizing Co., a New Jersey corporation, engaged in the preparation of a product whose main ingredient is sand and which is designed for use in dental laboratories, and the like, as a prophylactic or in the polishing of plates, and the shipment of same in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

New Jersey Pulverizing 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 it will cease and desist from the use of the word "Pummy" as a trade

name or designation for said product, and from the use of the word "Pummy" or "pumice" or of any phonetic or other simulation thereof, the effect of which tends or may tend to convey the impression or belief that said product is pumice, a volcanic ash or dust, as the term "pumice" is accepted and understood to mean. (Jan. 3, 1941.)

3021. **Hosiery or Lingerie Treatment—Qualities, Properties, and Results.**—Hogan G. Smith, an individual trading as "Chekit Company," engaged in the business of packaging a powder product for use as a treatment for hosiery and other garments 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.

Hogan G. Smith, in connection with the advertisement, offering for sale, sale or distribution of his product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed he will cease and desist from stating or representing in any way that the use of said product as a treatment for silk or rayon hosiery or lingeries will (*a*) prevent runs, rips, snags or breaks in, or the shrinkage or fading of, such fabrics; (*b*) double or improve the wearing quality of hosiery or lingeries which has already been given a treatment of this character; (*c*) reduce the user's hosiery expense by one-half; (*d*) make such hosiery proof against rain spotting or do more than to increase the resistance thereof to spotting by rain. (Jan. 3, 1941.)

3022. **Cloth Fabrics—Composition.**—Paragon Worsted Co., a Rhode Island corporation, engaged in the manufacture of cloth fabrics, some of which being composed of wool and some of wool and rayon, and in some instances, a small quantity of silk, 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.

Paragon Worsted Co., agreed it will cease and desist from offering for sale, selling or distributing in commerce, as commerce is defined by the Federal Trade Commission Act, any fabric or product composed in part of wool and in part of rayon, or any other fiber, without making full and nondeceptive disclosure of the fiber content thereof on the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof, however disseminated or published, such disclosure to be made by stating the true names of the fibers present, in the order of predominance by weight, and by stating the percentages of such fibers as are present therein; provided, however, that it shall not be necessary to state the percentage of rayon

or fiber other than wool, if the rayon or fiber other than wool be used exclusively for decorative purposes and is plainly visible as a decoration, and the same being not more than 5 per cent of the whole fabric or product by weight.

It is further understood that no provision contained in this agreement, so far as the same refers to wool products, shall be construed as authorizing or permitting, after July 14, 1941, the labeling of any wool product in any manner other than in strict conformity with the provisions of the Wool Products Labeling Act of 1939. (Jan. 3, 1941.)

3023. **Automobile Batteries—Qualities, Properties, and Results.**—Mitchell Battery Co., a Minnesota corporation, engaged in the business of manufacturing automobile batteries 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.

Mitchell Battery Co., in connection with the advertisement, offering for sale, sale, or distribution of its batteries in interstate commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist from the use of an amperage rating as descriptive of its batteries, or any thereof, when in fact, such rating indicates an electric current strength in excess of that which the said batteries or battery are or is capable of generating or producing. Said corporation also agrees to cease and desist from the use of an amperage rating or any statement concerning or method of representing the electric current productive capacity of its batteries, the effect of which tends or may tend to convey the belief that said batteries have such capacity in excess of what is actually the fact. (Jan. 6, 1941.)

3024. **Wheat Germ Oil—"Facsimile," Connections, or Sponsorship and Comparative Merits.**—Viobin Corporation, a corporation, engaged in the sale and distribution of a wheat germ oil designated "Rex Wheat Germ Oil" 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.

Viobin Corporation, in connection with the sale and distribution of its product in commerce, as defined by said act, agreed to cease and desist from:

(*a*) Representing, directly or inferentially, by the use of the word "facsimile" or word or words of similar meaning, or in any other manner, that any table, tabulation, statement or representation is a

true or identical copy of the purported original thereof unless such copy is, in fact a facsimile, or identical copy, of such original and without additions to or deletions from such original of any word, phrase, figure or punctuation sign or symbol.

(*b*) The use or reference to any authority, governmental or otherwise, in a manner causing or having the capacity to cause the impression or belief that any statement, representation or claim made by said corporation is based upon or supported by such authority when such is not the fact.

(*c*) Statements or representations to the effect that its product is superior to all similar products offered for sale and sold in competition therewith. (Jan. 8, 1941.)

3025. **Automobile Batteries—Qualities, Properties, and Results.**—Phil Sieff, Maurice Sieff, Minnie Sieff and Ann Sieff, copartners, trading under the name and style of "S. & M. Tire and Auto Supply Company," engaged in the business of selling a line of automobile accessories and equipment, including batteries, 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.

Phil Sieff, Maurice Sieff, Minnie Sieff and Ann Sieff, in connection with the advertisement, offering for sale, sale or distribution of batteries in commerce, as commerce is defined by the Federal Trade Commission Act, agreed they and each of them will cease and desist from the use of an amperage rating as descriptive of said batteries, or any thereof, when in fact, such rating indicates an electric current strength in excess of that which the said batteries or battery are or is capable of generating or producing. Each of said individuals also agrees to cease and desist from the use of an amperage rating or of any statement concerning or method of representing the electric current productive capacity of batteries, the effect of which tends or may tend to convey the belief that said batteries have such capacity in excess of what is actually the fact. (Jan. 6, 1941.)

3026. **Men's Furnishings—Composition.**—Rogers Peet Co., a corporation, owns and operates a number of men's furnishing stores in New York City, where it sells at retail a line of products, and is also engaged in conducting a mail order business 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.

Rogers Peet Co., in connection with the offering for sale, sale or distribution in commerce, as commerce is defined by the Federal Trade Commission Act, of products composed of rayon, either in whole or in part, agreed to cease and desist from failing to disclose the fact that said products are composed of rayon, either in whole or in part, as the case may be, such disclosure to be made clearly and unequivocally in invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof, however disseminated or published. Said corporation also agreed to cease and desist from the use of the term "Pure Silk" or "Silk-Faille" or the word "Silk" or of any other word or words of similar import, either alone or in connection or conjunction with any other word or words, as descriptive of products which are not silk exclusively or which contain any metallic weighting whatsoever. If the product is composed of weighted silk, either in whole or in part, and the word "Silk" or the terms "Pure Silk" or "Silk-Faille" be used in referring to the silk content of said product, then in that case, there shall be made to appear in immediate connection with said word or words full, conspicuous and nondeceptive disclosure of the presence of metallic weighting, together with the proportion or percentage thereof, in such silk or silk product, on labels, tags or brands attached to the merchandise, and in the invoices and in whatever advertising matter, sales promotional descriptions or representations which may be used in respect thereof, however disseminated or published. The following are illustrative examples of the disclosure provided for:

Silk, weighted, 20 percent.
Silk with 20 percent Metallic Weighting.
Silk Weighted up to 20 percent.
Silk Weighted not over 20 percent. (Jan. 13, 1941.)

3027. **Medicinal Preparation—Qualities, History, Source or Origin, and Prices.**—Charles K. Wilson, an individual trading as Old Indian Medicine Co., and as Wa-Hoo Medicine Co., engaged in the sale and distribution of a medicinal preparation designated "Wa-Hoo Bitters," in interstate commerce, in competition with other individuals and with firms, partnerships and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Charles K. Wilson, in connection with the sale and distribution of his preparation "Wa-Hoo Bitters" in commerce as defined by the Federal Trade Commission Act, agreed he will cease and desist, directly or inferentially, from:

(*a*) Representing that the preparation "Wa-Hoo Bitters" is a tonic or an effective treatment or competent remedy for maladies, diseases or ailments of the blood, nerves, stomach, liver or kidneys; or that it is efficacious in the treatment of or as a remedy for rheumatism, impure blood, gastritis, sour or bloated stomach, stomach trouble, liver or kidney complaint, indigestion, dyspepsia, catarrhal troubles, nervousness, salt rheum, scrofula, skin diseases, female weakness or any other affliction or condition whatsoever aside from constipation.

(*b*) Representing by statements such as "Old Indian Remedy" or "Old Indian Root and Herb Tonic" or otherwise, that the formula for such preparation was originated or used by American Indians prior to the time of their introduction to or acquaintance with generally recognized medical science.

(*c*) Representing as the customary or regular price or prices of his product, prices which are fictitious and in excess of prices at which such products are customarily sold or offered for sale in the usual course of business. (Jan. 2, 1941.)

3028. **Civil Service Correspondence Courses—Government Connection, Unique Nature, Advantages, Employment, Nature, Etc.**—Ray W. Davis, an individual trading as United Service Training Schools, engaged in the sale and distribution in interstate commerce, of a correspondence school course for home study intended to assist students thereof to pass civil service examinations, 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.

Ray W. Davis, in connection with the offering for sale, sale, and distribution of his correspondence course of instruction in commerce as defined by the Federal Trade Commission Act, agreed he will cease and desist from:

1. The use of the initials "U. S." or of any initials, words, emblems or depictions, or arrangement of words, initials, or depictions on his envelopes, letterheads, agreement forms or advertising media which causes or has the capacity to cause the impression or belief or the effect of which is to import or imply, that his correspondence school is a Governmental agency or has some official connection with the United States Civil Service Commission or other Governmental agency.

2. Representing, directly or inferentially, that the subscribing to or the completion of his course of instruction is a prerequisite for success in passing civil service examinations; or that education or

knowledge, unless acquired by completing his course of instruction, will not qualify applicants for civil service examinations.

3. Statements which import or imply that his correspondence course was prepared by persons who have information concerning forthcoming civil service examinations; or that students completing such course will thereby be qualified or prepared for examinations for any or all civil service positions designated in his advertising.

4. Representing by direct statement or by reasonable inference either in his advertising media or by statements by his canvassing salesmen or agents, or otherwise:

(*a*) That his correspondence school is under governmental supervision, has any official connection with the United States Civil Service Commission or other governmental agency; or that his salesmen or agents represent the United States Civil Service Commission or otherwise are in the employ of or officially connected with the United States Government.

(*b*) That his school or his salesmen or agents received advance notice of tests or examinations to be conducted by the United States Civil Service Commission, or receive information pertaining to tests or examinations, prior to the time such information is disseminated by the said Commission to the general public.

(*c*) That student or graduates of his course of instruction are assured of civil service appointments or of receiving employment by the Government; or that any governmental position. specifically designated or otherwise, will be available or reserved for persons subscribing to such instruction course.

5. Making any other misleading or deceptive statements or representations, by way of advertising, oral presentation, or otherwise, concerning the character, nature, quality, value or scope of the course of instruction or educational service sold or offered for sale by him, or in any other material respect, with the tendency or capacity to mislead or deceive students, prospective students, or the public. (Jan. 14, 1941.)

3029. **Electrical Therapeutic Devices—Properties, Results, Safety, Comparative Merits, History, Etc.**—Lillian B. Ferentz, an individual trading as Wayne Short-Wave Co., engaged in the sale and distribution of electrical devices, designated "Approved Model Short Wave Machines," for use in the treatment of various maladies or ailments, 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.

Lillian B. Ferentz, agreed that she will cease and desist from disseminating or causing to be disseminated any advertisements by means of the United States mails, by radio broadcast or otherwise 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 the purchase in commerce as defined by said Act, of an electrical device designated "Approved Model Short Wave Machine" or any similar device or devices, whether sold under the same name or any other name or names, which advertisements represent, directly or through implication:

(*a*) That such device constitutes a cure or remedy or a competent or effective treatment for sciatica, neuritis, lumbago, arthritis, rheumatism, or sinus.

(*b*) That such machine or device can be used for any purpose unless in direct connection with each and every such representation it be clearly and definitely indicated that such device cannot be used safely except under the constant supervision of a competent physician; that its use is attended with particular danger in cases of acute inflammatory processes such as nondraining cellulitis, acute arthritis and acute pelvic infection, in cases where the area treated has lost the sensation of heat, in cases involving the abdomen, pelvis or lower back during the period of pregnancy or menstruation, or in cases where the areas treated contain malignant growth; or that its use may result in deep skin burns, overheating of the tissues, injuries to the healing bone tissues, dissemination of acute infection into the system or other serious injury to the health of the person using the same.

(*c*) That such machine produces a "Friendly Fever" or that a fever can be created by the use of an electrical short-wave machine.

(*d*) That said machine is identical with short-wave machines used by medical practitioners and hospitals generally, or that it is equal or comparable to such machines in power, wattage output or otherwise.

(*e*) That the Wayne-Short-Wave Co. has been engaged in business for a long period of time or has, by reason of mature experience, or otherwise, contributed toward the development or perfection of diathermy machines. (Jan. 17, 1941.)

3030. **Medicinal Preparation—Qualities.**—Edwin L. Leisenring and Gordon Leisenring, copartners, trading as U. S. Drug and Sales Co., engaged in the sale and distribution of a medicinal preparation, designated "Hex Tabs," in interstate commerce, in competition with other partnerships and with 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.

Edwin L. Leisenring and Gordon Leisenring, and each of them, in connection with the sale and distribution in commerce, as defined by said Act, agreed that their product designated "Hex Tabs" or any similar product, whether sold under the same name or any other name or names, that they will cease and desist, directly or inferentially, from representing that such product is indicated as a treatment for prostate, kidney, bladder or gland sufferers, or that it constitutes a competent remedy or an effective treatment for maladies, diseases or ailments of the kidney, bladder, prostate or other glands. (Jan. 17, 1941.)

3031. **Cosmetics—Qualities, Properties, or Results.**—Agnes MacGregor, Inc., engaged in the sale and distribution of an extensive line 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.

Agnes MacGregor, 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 it will cease and desist from the use on labels affixed to its products or in advertising relating to said products or from furnishing others for their use of any advertisements or advertising or printed matter containing a word, statement or representation which either directly asserts or imports or implies or the effect of which tends or may tend to convey the belief that the use of any of said products or of any combinations thereof will effectively cleanse enlarged pores, eliminate blackheads, be a proper treatment for all types of acne, correct drooping contours, brace sagging muscles, penetrate into the second layer of skin tissue, remove or aid in the removal of crows feet, wrinkles, or fine lines, strengthen oil glands and prevent excess overflow, nourish the skin or aid in the nourishment thereof, grow eyelashes, promote evenness of suntan, reduce or have any appreciable effect on body weight, promote growth of new hair, correct dandruff, revitalize or add new life to the skin, or recondition the hair and scalp. (Jan. 24, 1941.)

3032. **Rugs—Nature, Source or Origin, Etc.**—R. H. Macy & Co., Inc., a New York corporation, engaged in the business of operating a retail department store in New York City from which it sells and has sold and distributed merchandise, including 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.

R. H. Macy & 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 it will cease and desist from:

1. The use of the words "Oriental," "Chinese," "Persian," "Numdah" or other distinctive Oriental name as descriptive of rugs which are not in fact made in the particular country or locality designated.

2. The use of the words "Oriental Reproductions," "Oriental Copies," "Chinese Reproductions," "Persian Reproductions," "Numdah Reproductions," or the use of the word "reproduction," "copy" or other word of similar meaning or implication as descriptive of rugs which are not in fact reproductions or copies of the types named, to wit: True counterparts or reconstructions thereof in all particulars.

3. The use of the words "Oriental," "Chinese," "Persian," "Numdah," or other distinctively Oriental appellation in connection with any rug or carpet which does not contain all the essential qualities and properties of such types or rugs; unless, when properly used to describe the design or pattern only thereof, the word "Oriental" or "Chinese" or "Persian" or "Numdah" shall be immediately accompanied by a word such as "design" or "pattern" printed in equally conspicuous type so as to indicate clearly that only the form delineated on the surface of the rug or carpet is a likeness of the type named; for example "Oriental Design," "Chinese Pattern." (Jan. 27, 1941.)

3033. **Leathers—Nature or Composition of Product.**—John R. Evans & Co., engaged in the importation of leathers sueded or napped in France, 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.

John R. Evans & Co., in connection with the sale or distribution of leathers in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from the use in its invoices or other printed matter or in any way of the word "Antelope" or the abbreviation thereof "Ant." in connection or conjunction with the words "Black French Suede" or "Black French Fin. Suede" as descriptive of such of said leathers as are not made from the skin or hide of an antelope; and from the use of the word "Antelope" or any abbreviation or simulation thereof in any way to designate such leathers sold by it or which it places or causes to be placed in the hands of others for use and sale, the effect of which tends or may tend to convey the belief to purchasers that said leathers are made from the skin or hide of an antelope. (Jan. 30, 1941.)

3034. **Poultry and Livestock Feed—Qualities or Properties.**—James A. Zehr and Jacob H. Zehr, copartners, trading as Zehr & Co., engaged in the manufacture of a poultry and livestock feed, and in the sale and distribution thereof under the trade designation "Zerco-Dri-Cod" 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.

James A. Zehr and Jacob H. Zehr, in connection with the advertisement, offering for sale, sale, or distribution of their product "Zerco-Dri-Cod" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed, and each of them agreed, to cease and desist from the use of the word "balanced" either alone or in connection with the word "completely" as descriptive of said product; and from the use of the statement "The completely balanced cod liver oil powder" or of any other statement of similar meaning or implication so as to import or imply that the said product is lacking in no essential nutritional factor. The said copartners also agreed to cease and desist from stating or representing that said product, when admixed to other feeds, assures a balanced ration at all times, when in fact such is not the case. (Feb. 3, 1941.)

3035. **Hair or Scalp Preparations—Qualities or Properties.**—John A. Martin, an individual, engaged in the manufacture of hair or scalp lotions or preparations, 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.

John A. Martin, in connection with the offering for sale, sale and distribution of his hair or scalp preparations in commerce, as defined by said Act, agreed to cease and desist from the use in his advertisements or advertising media of whatever kind or character, or in any manner, of the words "nu Gro" or "Nu Hair" or any other word or words consisting of a combination of letters, the resultant normal pronunciation of which simulates the words "New Grow" or "New Hair," as a trade designation for or as descriptive of said products, or any thereof; or of any word or words which tend or may tend to convey the belief to purchasers that said products, or any thereof, when locally applied to the hair or scalp, will cause the growth of new hair or promote the growth of hair. (Feb. 4, 1941.)

3036. **Peat Moss—Direct Dealing.**—Login Corporation, a corporation, whose president and principal owner is Louis P. Gainsborough, nee Louis P. Ginsburg, under the ownership and control of said individual,

engaged in packing and exporting fruit from San Francisco, Calif., to Europe where it controls through ownership two subsidiary companies operating under the name L. P. Ginsburg & Co., one in London, England, the other in Rotterdam, Holland, and also engaged under the trade name "Svenska Peat Aktiebolaget" 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.

Login Corporation and Louis P. Gainsborough, individually and as an officer of Login Corporation, in connection with the advertisement, offering for sale, sale or distribution of their product in commerce, as commerce is defined by the Federal Trade Commission Act, they, the said Login Corporation and the said Louis P. Gainsborough, agreed to cease and desist from the use of the trade name "Svenska Peat Aktiebolaget" either alone or in connection or conjunction with the word "Stockholm" or the words "San Francisco Office" or with the statement "Arrangements have been perfected for exporting the finest of our Swedish Peat Moss to America for distribution direct-to-users at considerable savings" or of any other statement of similar tenor or implication, the effect of which tends or may tend to convey the belief to purchasers that they are dealing with a Swedish corporation or with such a concern which has a branch office in San Francisco, Calif., and/or which is engaged in selling said product direct from Sweden to consumers. (Feb. 7, 1941.)

3037. **Burial Vault Materials—Qualities, Properties, or Results, and Comparative Merits.**—American Concrete Receptacle Co., trading as American Vault Co., a corporation engaged in the business of selling molds or forms, equipment and materials including cover handles, reinforcing materials, asphalt, sealing compounds, oils and paints, for use in the manufacture of burial vaults composed principally of asphalt and concrete, in interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

American Concrete Receptacle 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*) Statements or representations which directly assert or import or imply that burial vaults manufactured in molds or forms and/or containing materials sold by said corporation will afford or assure everlasting, eternal, enduring or permanent protection to the casket or

bodies encased therein, or that such vaults are and will remain permanently waterproof.

(*b*) Representing, directly or inferentially, that said vaults are more efficacious in preventing or retarding the formation of "sweat" or moisture on the inner surface thereof than are any vaults sold in competition therewith. (Feb. 12, 1941.)

3038. **Steel File Cases—Comparative Costs and Merits.**—The Steel Storage File Co., a corporation, engaged in the sale and distribution of steel file cases, designated "Safe-T-Stack Steel Storage Files," 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 Steel Storage File 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 the cost of its "Safe-T-Stack" file cases is lower or less than the cost of cardboard file cases of comparable size together with shelving used therewith; or, directly or inferentially, that the relation of the purchase price or consumer cost of its products to that of competitive products is other than is represented by a true comparison of such respective prices or costs.

(*b*) Representing that the use of its file cases in lieu of file cases sold in competition therewith will result in records or files occupying one fifth the space formerly occupied; or that the use of its said file cases will effectuate any saving in space or storage capacity greater than that which actually would be accomplished by the use thereof.

(*c*) Using any depiction or pictorial representation purporting to illustrate or show a comparison of its filing cases with similar products sold in competition therewith, by pictorially or otherwise representing such competitive products in disorder or disarray, so as to import or imply that such competitive products would necessarily occupy the space as pictorially represented. (Feb. 12, 1941.)

3039. **Radios, Etc.—Prices and Reduced Prices.**—Emerson Radio & Phonograph Corp., engaged in the business of manufacturing radios and radio-phonograph combination sets and in the sale thereof in interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Emerson Radio & Phonograph Corp., 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 "List Price" of a designated amount, when in fact such designated amount is fictitious or in excess of the established price for which said products have been and/or are customarily sold in the usual course of retail trade.

2. The use of the word and figures "Now $9.95" or of any similar phrase or statement of equivalent meaning to designate or represent products regularly and usually offered for sale and sold at that price, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the price of the products referred to has been recently reduced.

3. The use of the word and figures "Save $10.00" or of any other phrase of similar implication in referring to products having a specified alleged "List Price" or which are offered for sale or sold at a designated amount so as to import or imply that the said products are customarily sold in the usual course of retail trade for the said list price or that the price for which said products are offered for sale or are sold is $10 less than the price for which said products are customarily sold in the usual course of retail trade. (Feb. 17, 1941.)

3040. **Manuals or Pamphlets—Unique Nature, Government Approval, Etc.**—Milton Gladstone, an individual, trading as Arco Publishing Co., engaged in the publication of mimeographed or printed manuals or pamphlets containing questions and answers and other material designed to prepare persons for Civil Service examinations, 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 agreements to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Milton Gladstone, in connection with the sale and distribution of his mimeographed or printed manuals, pamphlets or other publications in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from:

(*a*) Representing, directly or inferentially, that such publications contain questions and answers, new type or otherwise, which will be used in forthcoming Civil Service examinations, or that he has access to questions contemplated by the United States Civil Service Commission for any future examination, or has any means of knowing the type of questions or answers that will be given or required.

(*b*) Statements or representations which cause or have the capacity to cause the impression or belief that his publications, or the issuance thereof, have been authorized, authenticated, sanctioned or

approved by any agency, governmental or otherwise, when, in fact, said publications have not received the sanction or approval of such agency. (Feb. 17, 1941.)

3041. **Electrical Refrigerators—Governmental Awards.**—Edison General Electric Appliance Co., Inc., a corporation, engaged in the sale and distribution of electrical appliances or equipment including electrical refrigerators designated "Hotpoint Electric Refrigerators" 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.

Edison General Electric Appliance Co., Inc., in connection with the sale and distribution of its commodities in commerce as defined by said Act, agreed to cease and desist from the use of any statement or representation, the effect of which tends or may tend to convey or cause the belief that it has a contract with the United States Government or any agency thereof to furnish electric refrigerators in number, quantity or percentage other than is a fact. It is further understood that no provision contained in this agreement shall be construed as authorizing the advertising of United States Governmental awards when such advertising is prohibited by agreement with the United States Government or is in violation of law. (Feb. 18, 1941.)

3042. **Hair Milk—Qualities, Properties, or Results.**—Frank X. Hess, an individual, trading as Hess Hair Milk Laboratories, engaged in the sale and distribution of drug preparations, including a product designated "Hess Hair Milk" in interstate commerce, in competition with other individuals, and with partnerships, firms and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Frank X. Hess, in connection with the sale and distribution in commerce, as defined by said Act, of his product designated "Hess Hair Milk" or any similar product, whether sold under the same name or any other name or names, agreed to cease and desist from representing, directly or inferentially, through the use of testimonials or in any manner whatsoever, that it is a "natural treatment" or natural product; that it will prevent falling hair; that it is a hair tonic or scalp conditioner or has any remedial or tonic effects on the scalp or hair; that its use will restore the original, natural or youthful color to gray or faded hair; that it will cause hair to have a youthful appearance; or that it will prevent the appearance of age. (Feb. 19, 1941.)

3043. **Blankets—Prices and Composition.**—Hamilton Ross Factories, Inc., a corporation, engaged in the sale and distribution of various

products including blankets 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.

Hamilton Ross Factories, Inc., in connection with the sale and distribution of its blankets or other merchandise in commerce as defined by said Act, agreed to cease and desist from:

(*a*) Quoting or representing, directly or inferentially, 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 usual course of business.

(*b*) The use of the words "Silky Rayon" or either of such words or of any other word or words of similar import or meaning to designate or describe its blanket binding or other fabrics or merchandise made of cotton.

(*c*) The use of the words "Wooly" or wool or other word or words of similar import or meaning to designate or describe its blankets or other products when such blankets or products are composed of or contain fibers other than wool, and from the use of the words "Wooly" or wool or other word or words of similar import or meaning in any manner so as to mislead, confuse or deceive the purchaser into the erroneous belief that such blankets or products are composed of wool.

It is further understood that no provisions contained in this agreement, so far as the same refers to wool products, shall be construed as authorizing or permitting, after July 14, 1941, the labeling of any wool product in any manner other than in strict conformity with the provisions of the Wool Products Labeling Act of 1939. (Feb. 19, 1941.)

3044. **Burial Vaults—Composition and Qualities, Properties, or Results.**—Asphalt Grave Vault Co., a corporation, engaged in the manufacture of burial vaults and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Asphalt Grave Vault Co., in connection with the sale and distribution of its products in commerce as defined by said Act, agreed to cease and desist from:

(*a*) The use of the words "Asphalt Grave Vault" or other word or words of similar import or meaning to designate or describe its vaults

when such vaults are composed in whole or in part of or contain ingredients other than asphalt; and from the use of the word "Asphalt" or other word or words of similar import or meaning, either alone or in conjunction with some other word or words, in any manner, so as to mislead, confuse or deceive the purchaser into the erroneous belief that such vaults are composed of asphalt.

(*b*) The use of the words "Asphalt Concrete Grave Vault" or other word or words of similar import or meaning to designate or describe its vaults when in fact the binding agent for the aggregates in such vaults consists of Portland cement or when such binding agent does not consist of asphalt; and from the use of the word "Asphalt" or other word or words of similar import or meaning, either alone or in conjunction with some other word or words, in any manner, so as to mislead, confuse or deceive the purchaser into the erroneous belief that the binding agent of such vaults consists of asphalt or that such vaults are made of a mastic composed of asphalt and aggregates.

(*c*) The use of any statement or representation, the effect of which tends or may tend to convey the belief or impression that said vaults or any of them are indestructible or will afford permanent, everlasting or eternal protection to bodies or caskets contained or encased therein.

(*d*) Stating or representing that, at the time of interment, its vaults or any thereof are waterproof, or airtight, or that they will continue to be or remain impervious to water, moisture or dampness, unless such vaults are in fact waterproof, airtight, impervious to water, moisture or dampness. (Feb. 20, 1941.)

3045. **Mattresses—Prices.**—Isadore Galitzky, an individual, trading as Restmore Mattress Co., engaged in the manufacture of mattresses 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.

Isadore Galitzky, 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 forthwith from the use of labels or advertising matter of whatever kind or description or through supplying the same to others for their use on or in connection with said products of any false, fictitious or misleading price representation which purports to be the retail sales price of said product but which, in fact, is in excess of the price for

which said products are customarily sold in the usual course of retail trade. (Feb. 20, 1941.)

3046. **Mineral Water—Qualities or Properties.**—Burke Edwards, an individual, engaged in the sale and distribution of bottled water designated "Berkeley Springs Mineral Water" 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.

Burke Edwards, in connection with the sale and distribution in commerce as defined by said Act of his "Berkeley Springs Mineral Water," or any similar product whether sold under the same name or any other name or names, agreed to cease and desist, directly or inferentially, from representing that such product or products is beneficial in the treatment of or is indicated as a treatment for arthritis, diabetes, skin diseases or rheumatism or constitutes a competent remedy or an effective treatment for any of such maladies, diseases or ailments. (Feb. 10, 1941.)

3047. **Fabrics—Composition and Registration.**—Duplan Silk Corp., a corporation, engaged in the operation of silk-throwing mills and also in the manufacture of fabrics composed of rayon and of rayon and silk, 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.

Duplan Silk Corp. in connection with the sale and distribution of its products in commerce, as defined by said Act, agreed to cease and desist from the use of the name or designation "Toujours," "Toot Sweet," or "Evergrand," or any other name or designation, fanciful or otherwise, in referring to said fabric without disclosure of the fact that said fabric is made of or contains rayon as the case may be, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof, however disseminated or published. The said corporation also agrees to cease and desist from the use of the term "Reg. U. S. Pat. Off." or of any other term of similar meaning or implication, in connection with a purported trade name or mark, when in fact, such trade name or mark has not been registered as such in the United States Patent Office. (Feb. 12, 1941.)

3048. **Feminine Hygiene Preparations—Qualities, Properties, or Results.**—Smith Laboratory, Inc., a corporation, engaged in the sale and distribution in interstate commerce of pharmaceutical products for feminine hygiene, designated "Colagyn Hygienic Vaginal Jelly" and

"O. M. 41 Hygienic Vaginal Jelly," 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.

Smith Laboratory, Inc., in connection with the sale in commerce as defined by the Federal Trade Commission Act, or the dissemination of advertising, by the means and in the manner above set out, of its products, designated "Colagyn Hygienic Vaginal Jelly" and/or "O. M. 41 Hygienic Vaginal Jelly," or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under those names or any other name or names, agreed to forthwith cease and desist from representing, directly or by implication, that said product or products are dependable, reliable, positive or unfailing contraceptives; will kill or destroy all vaginal germ life or bacteria; constitute adequate protection against all forms of germ life; are adhesive or constitute a perfect or adequate barrier or diaphragm; or constitute an effective treatment or a competent remedy for leucorrhea or inflammation or infections of the cervix or vagina. (Mar. 6, 1941.)

3049. **Men's Neckwear—Composition.**—Wembley, Inc., a corporation, engaged in the manufacture of men's neckwear 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.

Wembley, 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—

(*a*) The use of the words "Silk and Bemberg" as descriptive of those of its products which are not composed of silk, the product of the cocoon of the silk worm, and of Bemberg Rayon, that is to say, rayon made by the cuprammonium process.

(*b*) The use of the word "Silk" as descriptive of a fiber content of a product and the use of the word "Bemberg" to designate other fibers of which the product is composed in part, when in fact said fiber contents of the product are not, respectively, made wholly from unweighted silk, the product of the cocoon of the silk worm, and from rayon made by the cuprammonium process. If the product is composed in substantial part of silk which has been weighted, and the word "silk" is used as descriptive of the silk which has been weighted, then in that case, the word "Silk" shall be immediately accompanied

by the word "weighted", printed in equally conspicuous type, together with a clear indication of the maximum percentage of weighting in such weighted silk. If the product also contains rayon, this fact likewise shall be clearly and unequivocally disclosed in the invoices and labeling and in all advertising and printed matter, such disclosure of the fiber contents of the product to be made by properly naming each constituent thereof in the order of its predominance by weight, beginning with the largest single constituent. (Feb. 25, 1941.)

3050. **Optical Merchandise—Business Connections and Source or Origin.**—Hershel H. Shugart, an individual, trading under the name "Nation Wide Optical Company", conducts a mail-order optical business, selling eyeglasses, mountings and lenses to customers 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.

Hershel H. Shugart, in connection with the offering for sale, sale or distribution of his optical merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use in his advertising of whatever kind or description, or in any way, of the phrase "Distributors for Petersburg Lens Co." either alone or in connection with "Petersburg, Va." or with any other words, as descriptive of the nature of his business; and from the use of the quoted words in any way, the effect of which tends or may tend to convey the belief to customers that the said individual is associated as a distributor with any concern located in Petersburg, Va., or that the optical goods offered for sale and sold by him are manufactured at or by a concern located in Petersburg, Va. (Mar. 11, 1941.)

3051. **Furniture—Composition.**—Imperial Furniture Co., a corporation, engaged in the sale and distribution of furniture 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 Furniture Co., in connection with the offering for sale, sale and distribution of its products in commerce, as defined by the Federal Trade Commission Act, agreed to cease and desist from the use in its advertisements, labels, brands, invoices or other advertising media of the words "All Mahogany" as descriptive of any product not composed of "All Mahogany". If the exterior surfaces of said product are composed of "All Mahogany" or mahogany veneer

and the words "All Mahogany" are used to describe such exterior surfaces, then the words "All Mahogany" shall be immediately accompanied by some other word or words, printed in equally conspicuous type, so as to indicate clearly that the product is not composed wholly of mahogany or "All Mahogany" and that the words "All Mahogany" refer only to the exterior surfaces of said product. (Mar. 13, 1941.)

3052. **Disinfectant—Qualities, Properties, or Results.**—Pioneer Manufacturing Co., a corporation, engaged in the sale and distribution of a product designated "KO" (Kills Odor) 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.

Pioneer Manufacturing Co., in connection with the offering for sale, sale or distribution of its product "KO" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from stating or representing that said product meets all the requirements for a perfect or ideal disinfectant as outlined by Milton J. Rosenau, referred to in Paragraph One of the stipulation, or that it will kill all forms of germs in thirty minutes or that it is effective for killing germs suspended in the air. (Mar. 18, 1941.)

3053. **Linens, Laces, and Handkerchiefs—Quality, Source or Origin, and Manufacturers.**—George Boutross, an individual, trading as Boutross Brothers, engaged in the importation of linens, laces and handkerchiefs and in the sale thereof, as well as other products which are of domestic origin, 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 public, is a handmade fillet lace of grape design produced from linen thread in the Tuscany district or province of Italy.

George Boutross, in connection with the sale or distribution of merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from—

1. The use of the word "Tuscanny" or the letters "Tusc." or of any other simulation of the word "Tuscany" as descriptive of articles sold by him which are not in fact actually made in the Italian district or province of Tuscany of linen thread, and from the use of the quoted word or letters in any way the effect of which tends or

may tend to confuse or mislead purchasers with respect to the true type, quality or origin of an article of merchandise offered for sale or sold by him.

2. The use of the word "Manufacturers" or of any other word of similar implication on his stationery or printed matter or in any other way so as to import or imply that he makes or manufactures the articles which he sells, or that he actually owns and operates or directly and absolutely controls the plant or factory in which said articles are produced. (Mar. 20, 1941.)

3054. **Mattresses—Prices.**—Handcraft Bedding Corp., a corporation, engaged in the manufacture of mattresses and allied products, 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.

Handcraft Bedding Corp., in connection with the offering for sale, sale or distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of labels, or from supplying to others for their use on or in connection with said products, labels, which bear any false, fictitious or misleading price representation purporting to be the retail sales price of each such product but which, in fact, is in excess of the price for which each said product is customarily sold in the usual course of retail trade. (Mar. 24, 1941.)

3055. **Ozone Generating Machines—Qualities, Properties, or Results.**—Chris F. DeJonge, an individual trading as American Ozone Co. engaged in the business of assembling parts obtained by him from the manufacturers thereof into completed so-called Ozone generating machines of three different models, two of which are designed for use in hatchery or poultry houses, the third and smaller model being for home or office use, 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.

Chris F. DeJonge, in connection with the advertisement, offering for sale, sale or distribution of his machines in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of any statement or representation, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the use of any one of said machines in poultry houses would contribute to the development and health

of the birds therein or that said machine would generate sufficient ozone to have any germicidal effect. (Mar. 25, 1941.)

3056. **Wood Finish and Preservative—Qualities, Properties, or Results.**—L. Sonneborn Sons, Inc., a corporation, engaged in the manufacturing of various preparations, including one designated "Lignophol" to be used as a finish and preservative for wood, and in the sale and distribution of its preparations in interstate commerce, in competition with other corporations and with individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

L. Sonneborn Sons, Inc., in connection with the offering for sale, sale or distribution of its "Lignophol" preparation 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, pictorial or otherwise, so as to import or imply that said preparations, when applied to the top surface of wood flooring, will penetrate practically therethrough, or the effect of which statements or representations tends or may tend to convey the impression or belief to purchasers or prospective purchasers that the penetrative quality of said product, when applied to a wood surface, is in excess of what is actually the fact. (Mar. 25, 1941.)

3057. **Emollient Cream—Qualities, Properties, or Results.**—Ray G. Maloney, an individual trading as Fairystone Manufacturing Co., and Willard J. Dungan and Arthur E. Maloney, co-partners trading as Fairystone Distributing Co., engaged in the sale and distribution of an emollient cream designated "Fairystone", in competition with other individuals and partnerships and with 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.

Ray G. Maloney, Willard J. Dungan and Arthur E. Maloney, in connection with their sale in commerce, as commerce is defined by the Federal Trade Commission Act, or the dissemination of advertising, by the means and in the manner used by them, of the preparation designated "Fairystone", or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under such name or any other name or names, agreed they will forthwith cease and desist from:

(*a*) Representing that such preparation is an "absolute sunburn protection", or, unqualifiedly, that it affords protection from sunburn.

(*b*) Stating, directly or inferentially, that it filters out the burning or ultra-violet rays of the sun and permits other rays of the sun to gain access to the skin.

(*c*) Representing, unqualifiedly, that it will effectively cover or conceal scars, birthmarks or other skin blemishes.

(*d*) Representing that by its application users will look years younger or gain the appearance of youth.

(*e*) Statements which cause or have the capacity to cause the impression or belief that such preparation is an effective treatment or a competent remedy for pimpled or blotched skin. (Mar. 27, 1941.)

3058. **Pianos—Sacrifice Prices.**—C. J. Richardson, an individual trading as Baldwin Music Co., engaged in the sale and distribution of pianos 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.

C. J. Richardson, in connection with the sale or offering for sale of pianos in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from representing, directly or inferentially, in his advertising or other printed matter, by oral presentation or in any other way, that new pianos or used pianos which are not in fact repossessed as represented, are instruments which, having been previously sold under the deferred payment or other plan, have been repossessed because of inabilities of the purchasers thereof to furnish or meet the payments thereon or for any other reason, or that said instruments are being sacrificed for balances due or at reduced prices. (Mar. 27, 1941.)

3059. **Mattresses and Studio Couches—Old Materials as New, Composition, and Law Compliance.**—Reliable Mattress Co., a corporation, engaged in the business of manufacturing mattresses and studio couches 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.

Reliable Mattress Co., in connection with the offering for sale, sale or distribution of its mattresses or related products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from—

1. Representing, by the use of the words "New Materials" or any other word or words of similar meaning or implication, that a mat-

tress or mattress filling made in whole or in part from old, used, or second-hand materials is new or is made entirely from new materials. If the mattress or mattress filling is composed in substantial part of new materials, and the word "New" is used as descriptive of such new materials, then in that event, such word "new" shall be accompanied by some other word or words printed in equally conspicuous, legible type so as to indicate clearly that said mattress or mattress filling is not made wholly from new materials but is made in part of materials which are not new.

2. The use of the term "100% Cotton Linters" as descriptive of a mattress, the filling of which is not made wholly from cotton linters.

3. Stating or representing that a mattress made in whole or in part from old, used, or second-hand material, a fact which is not properly disclosed, complies with any State law or laws which require such disclosure. (Mar. 31, 1941.)

3060. **Shoes—Composition.**—Arnold Constable & Co., Inc., a corporation, engaged in the business of operating a department store from which it sells and has sold and distributed merchandise, including ladies' shoes, 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.

Arnold Constable & Co., Inc., in connection with the advertisement, offering for sale, sale or distribution of its shoes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from—

1. Using the word "Alligator" or any other word of similar import or meaning, to designate or describe shoes not made from the hide of an alligator, or otherwise representing that shoes made from other leathers or materials, are made from alligator hide; provided, however, that said word "Alligator" may be used to describe the finish of shoes which are made from other materials and which are finished or embossed to resemble alligator leather, when said word is immediately accompanied by another word or words clearly indicating that said designation refers only to the pattern embossed on such materials.

2. Representing that the materials or leathers of which said shoes are made are other than the actual materials or leathers used in such shoes. (Apr. 1, 1941.)

3061. **Depilatory—Qualities, Properties, or Results, and History.**—Louis B. Frohlich, an individual, also trading as Frohlich Laboratories, Frolich Laboratories, Inc., and David F. Griff, an individual, trading as Frohlich Distributing Co., engaged in the sale and distribution in

interstate commerce of a pharmaceutical preparation designated "Dr. Frohlich's Z'Out Hair Destroyer" for use as a depilatory, 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.

Louis B. Frohlich, Frohlich Laboratories, Inc., and David F. Griff, in connection with the sale and distribution of their product in commerce, as defined by said Act, agreed to cease and desist from—

(*a*) Representing, directly or inferentially, that such preparation will permanently destroy hair or prevent the regrowth of hair, or that its use will result in the permanent removal of hair.

(*b*) Statements which cause or have the capacity to cause the impression or belief that such preparation possesses any marvelous qualities or that its development is the result of seven years work or of any amount of work, effort, experimentation, or research greater than the actually used or performed in the development thereof. (Apr. 1, 1941.)

3062. **Textile Merchandise, Including Wearing Apparel for Men and Women, and Sheets and Pillow-Cases—Mills, Composition, and Nature of Manufacture.**—Helix Co., Inc., a New York corporation; Royal Crown Hosiery Co., Inc., a New Jersey corporation; Royal Crown Hosiery Co., Inc., a Massachusetts corporation; Royal Crown Hosiery Co., Inc., a Michigan corporation, and Royal Crown Hosiery Co., Inc., an Illinois corporation, which consummates the purchase of all merchandise used by each of aforesaid corporations in the course and conduct of its business, engaged in the sale and distribution in interstate commerce of textile merchandise, including wearing apparel for men and women, sheets and pillow-cases, 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.

Helix Co., Inc., Royal Crown Hosiery Co., Inc., a New Jersey corporation, Royal Crown Hosiery Co., Inc., a Massachusetts corporation, Royal Crown Hosiery Co., Inc., a Michigan corporation, and Royal Crown Hosiery Co., Inc., an Illinois corporation, 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:

(*a*) The use of the word "Mills" in connection with their trade names or the use of such word or any other word or words of similar implication in any manner having the tendency or effect of conveying

the belief that they make or manufacture commodities sold by them or that they actually own, operate, or directly and absolutely control a mill or factory in which such commodities are made or manufactured.

(*b*) The use of the words "Silk," "Satin," or any other word or words connoting silk in advertisements, trade literature, or otherwise to designate or describe fabrics or merchandise not composed of silk, the product of the cocoon of the silkworm. If the products are composed in part of some other fiber material, and the word "Silk" or similar word is used to refer to the silk content of such products, then such word, whenever used, shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that the products are not composed wholly of silk. If the fiber other than silk constitutes the major content of such products, the name of the predominating material shall precede the word "Silk" or "Satin" as, for example, "Cotton and Silk."

(*c*) Using the word "Bemberg" or other name or word either alone or in connection with any other word or words, as descriptive of the rayon content of garments, fabric, or material, unless such name or word is immediately accompanied by the word "Rayon" in letters or type of equal conspicuousness; as, "Bemberg Rayon."

(*d*) 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 constitutent and by giving the percentage of any constituent fiber the amount of which is 5 per cent or less by weight.

(*e*) The use of the term "lisle" as descriptive of goods which are not in fact made of lisle, as the term's generally understood and recognized.

(*f*) The use of the word or term "Pre-Shrunk" or other word or words of like import, as descriptive of goods which are not in fact shrinkageproof or nonshrinkable or have not been fully shrunk or "pre-shrunk" to the extent that no residual shrinkage is left remaining therein. If the term "Pre-shunk" or similar term or terms be used properly to indicate that goods have undergone the application of a shrinking process but as to which there remains a certain amount of residual shrinkage, then such term or terms shall be accompanied, as an integral part thereof, and in immediate conjunction therewith, by a statement definitely and clearly indicating 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 Standards CS59-36."

(*g*) Statements which cause or have the capacity to cause the impression or belief that sheets, pillow-cases or other textile products to which starch has been added contain no starch. (Apr. 1, 1941.)

3063. **Ear Oil—Qualities, Properties, or Results, and Ailments.**—Requa Manufacturing Co., Inc., a corporation, engaged in the manufacture of a number of proprietary preparations, including an unguent called "Requa's Oil For the Ear" 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.

Requa Manufacturing Co., Inc., in connection with the advertising, offering for sale, sale, or distribution of the preparation called "Requa's Oil For the Ear" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from stating or representing—

1. That the use of said product will—

(*a*) Result in immediate relief for stuffed-up ears.

(*b*) Clear up in a moment from the ear what may be bothersome thereto for weeks.

(*c*) Cause wax accumulations in the ear to quickly dissolve or almost instantly soften.

(*d*) Do away with ear discomforts which may result in permanent deafness.

(*e*) Be of any appreciable value when applied to skin surfaces, as the neck or chest.

2. That irritations of the outer ear, the external auditory canal, result from head colds. (Apr. 2, 1941.)

3064. **Women's Shoes—Composition.**—Schwartz & Benjamin, Inc., a corporation, engaged in the manufacture of women's shoes 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.

Schwartz & Benjamin, Inc., in connection with the advertisement, offering for sale, sale, or distribution of its shoes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. Using the word "Alligator" or any other word of similar import or meaning to designate or describe shoes not made from the hide of an Alligator, or otherwise representing that shoes made from other leathers or materials are made from Alligator hide; provided, however, that the said word "Alligator" may be used to describe the finish of shoes which are made from other materials and which are finished or embossed to resemble Alligator leather, when said word is immediately accompanied by another word or words clearly indicating that said designation refers only to the pattern embossed on such materials.

2. Representing that said materials or leathers of which said shoes are made are other than the actual leathers or materials used in such shoes. (Apr. 2, 1941.)

3065. **Medicinal Preparation—Qualities, Properties, or Results, and Safety.**—Morris W. Hillinger, an individual, trading as Hilly Medicinal Products, engaged in the sale and distribution in interstate commerce of a medicinal preparation designated "H R 5" for use after over-indulgence in alcoholic liquors, 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.

Morris W. Hillinger, in connection with the sale in commerce, as defined by the Federal Trade Commission Act, or the dissemination of advertising, by the means and in the manner above set forth, of its preparation designated "H R 5", or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under such name or any other name or names, agreed to forthwith cease and desist from:

(*a*) Representing, directly or inferentially, that such preparation constitutes a competent or effective treatment or remedy for "Hangover," or the condition caused or induced by excessive indulgence in alcoholic liquors.

(*b*) Disseminating any advertisement which fails to reveal that there is potential danger in the use of such preparation by persons suffering from or afflicted with organic heart trouble or high blood pressure and that it should not be used by persons having such disability or disabilities except upon the advice of a physician; provided, however, that such advertisement need contain only a statement that the preparation should be used only as directed on the label thereof if and when such label either contains a caution or warning to the same effect or specifically directs attention to a similar caution or warning statement in accompanying labeling. (Apr. 2, 1941.)

3066. **Ladies' Shoes—Professional Supervision.**—Charles Meis Shoe Manufacturing Co., a corporation, engaged in the manufacture of ladies' shoes at its factory in Lebanon, Ohio, and in the sale and distribution thereof in interstate commerce, in competition with other corporations likewise engaged 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.

Charles Meis Shoe Manufacturing Co., 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 of the word "Doctor" or the abbreviation "Dr." or any simulation of such abbreviations in connection with a name or with any other word or words as a trade name, brand or designation for said products, or in any other way, 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 said products are made in accordance with the design or under the supervision of a physician and contain special scientific or orthopedic features which are the result of medical determination or services. (Apr. 4, 1941.)

3067. **Medicinal Preparation—Qualities, Properties, or Results, and Ailments.**—Redolent Products Co., a corporation, engaged in the business of compounding a preparation called "Cur-a-Ped" 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.

Redolent Products Co., in connection with the offering for sale or sale of its product "Cur-a-Ped," agreed to cease and desist forthwith from the use of any statement or representation in its advertisements or advertising matter of whatever kind or description disseminated by the means or in the manner above set out or otherwise in commerce, so as to import or imply or the effect of which tends or may tend to convey the belief or impression to purchasers or prospective purchasers that—

(*a*) The local application of said product would have therapeutic effect other than such as result from the analgesic properties which it possesses, or that it would be of significant value in destroying the deep burrowing fungi or ringworm or have value other than as a rubefacient or emollient to afford temporary relief for tired, aching, burning, itching, tender, perspiring feet and sore, cracked, inflamed toes or to overcome superficial infection of athlete's foot.

(*b*) Such specific bodily ailments as acute rheumatic fever, Bright's disease, diabetes, cirrhosis of the liver, and other ailments listed above, are attributable or can be traced to bad feet or that treatment of foot disorders will correct such ailments. (Apr. 7, 1941.)

3068. **Mattresses, Box Springs, and Bedding—Old, Used, or Second-Hand as New.**—Palmer Bedding Co., a corporation, engaged in the business of manufacturing mattresses, box springs and bedding 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.

Palmer Bedding Co., in connection with the labeling, tagging, or other advertisement of its products offered for sale, sold, or distributed in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. Representing, by inference or implication or otherwise, that said products are made of or contain all new material, when in fact they are composed, either in whole or in part, of used or second-hand materials.

2. Failing to clearly and unequivocally disclose that said products are composed, either in whole or in part as the case may be, of used or second-hand materials. (Apr. 7, 1941.)

3069. **Shoes—Composition.**—J. M. Connell Shoe Co., Inc., a corporation, engaged in the manufacture of shoes for men, women, and children, 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. M. Connell Shoe Co., Inc., in connection with the advertisement, offering for sale, sale, or distribution of its shoes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from:

1. Using the word "Alligator," or any other word of similar import or meaning, to designate or describe shoes, or any part thereof, not made from the hide of an alligator, or otherwise representing that said shoes, or any part thereof, made from other leathers or materials, are made from alligator hide; provided, however, that said word "Alligator" may be used to describe the finish of shoes, or a part or parts thereof, which is or are made from other materials and which is or are finished or embossed to resemble alligator leather, when said word is immediately accompanied by another word or

words clearly indicating that said designation refers only to the pattern embossed on such materials.

2. Representing that the materials or leathers of which said shoes, or parts thereof, are made are other than the actual materials or leathers used in the making of such shoes. (Apr. 7, 1941.)

3070. **Women's Shoes—Composition.**—Selby Shoe Co., a corporation, engaged in the manufacture of women's 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.

Selby Shoe Co., in connection with the advertisement, offering for sale, sale, or distribution of its shoes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from:

1. Using the word "Alligator" or any other word of similar import or meaning, to designate or describe shoes not made from the hide of an alligator, or otherwise representing that shoes made from other leathers or materials, are made from alligator hide; provided, however, that said word "Alligator" may be used to describe the finish of shoes which are made from the other materials and which are finished or embossed to resemble alligator leather, when said word is immediately accompanied by another word or words clearly indicating that said designation refers only to the pattern embossed on such materials.

2. Representing that the materials or leathers of which said shoes are made are other than the actual materials or leathers used in such shoes. (Apr. 8, 1941.)

3071. **Baby Chicks—Government Supervision and Nature of Raising.**—Mary Booth Powell, an individual trading as Superior Hatchery, engaged in the sale and distribution of chicks 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.

Mary Booth Powell, in connection with the sale or offering for sale of her chicks in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(*a*) Representing, directly or inferentially, that she is a U. S. Record of Performance poultry breeder, that she operates a poultry breeding plant under the supervision of an official state agency supervising U. S. R. O. P. work or that her chicks are R. O. P. chicks until such

time as she shall in fact become a U. S. Record of Performance poultry breeder and become entitled properly to represent chicks to be U. S. R. O. P. chicks in accordance with provisions of The National Poultry Improvement Plan.

(*b*) The use of the words "Ozone Conditioned" or "Ozone-Vitalized"; or the use of any statement or representation the effect of which tends or may tend to convey the belief to purchasers that chicks subjected to an Ozone machine thereby acquire strength, health or livability. (Apr. 8, 1941.)

3072. **Shoes—Professional Supervision.**—Kepner-Scott Shoe Co., 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.

Kepner-Scott Shoe Co., 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 forthwith from the use of the word "Doctor" or the abbreviation "Dr." in connection with a name or with any other word or words as a trade name, brand or designation for said products, or in any other way, 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 made in accordance with the design or under the supervision of a physician and contain special scientific or orthopedic features which are the result of medical determination or services. (Apr. 8, 1941.)

3073. **Cameras—Value, Price, Qualities, and Maker.**—Al B. Wolf and Max Schwartz, copartners, trading as DeLuxe Products Co. and National Business Builders engaged under the latter trade name in the sale and distribution of cameras in interstate commerce, in competition with other partnerships and with corporations, individuals and firms likewise engaged, entered into the following agreements to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Al B. Wolf and Max Schwartz, 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 to cease and desist from:

(*a*) The use of the statement "Regular $5.00 Value" or of any other statement of similar implication or meaning, as descriptive of the value of said products; and from the use of the said statement or other similar statement so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that each of said

products is customarily sold for the indicated amount in the usual course of retail trade or that it has such value.

(*b*) The use of the word "Speed" either alone or in connection or conjunction with the word "Super" or with any other word or words or in any way as descriptive of the lens with which their product is equipped.

(*c*) The use of the word "Remington" or any simulation thereof as a mark or brand or designation for their said product, the effect of which tends or may tend to convey the belief to purchasers that said products are products made or manufactured by either of the well known and long established concerns, namely, Remington Rand, Inc., and Remington Arms Co. (Apr. 9, 1941.)

3074. **Linens, Laces, and Handkerchiefs—Source or Origin and Manufacturers.**—European Linen Importing Corporation, a corporation, engaged in the importation and wholesale distribution of Chinese and Japanese linens, laces and handkerchiefs in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

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.

European Linen Importing Corporation, in connection with its sale and distribution of merchandise in commerce as defined by said act, agreed to cease and desist from:

(*a*) The use of the word "Tuscany" or word or words of similar import either with or without the explanation "Made in China" 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.

(*b*) The use of the word "Manufacturers" in connection with its corporate or trade name and of the word "manufacturers" as descriptive of its business; and from the use of any other word or words of similar implication, the effect of which tends or may tend to convey the belief that it makes or manufactures the products sold by it or that it actually owns and operates or directly and absolutely controls a plant or factory in which such products are made or manufactured. (Apr. 10, 1941.)

3075. **Casein Glue—Qualities.**—L. W. Ferdinand & Co., Inc., a corporation, engaged in the manufacture of casein glue and other com-

pounds, and in the sale and distribution thereof under the trade name "Stanzall" 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. W. Ferdinand & Co., Inc., in connection with the offering for sale, sale or distribution of its casein glue in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use on its labels, printed matter, or in any other way, of the word "waterproof" or of any other word or words of similar import as descriptive of said glue which is not, in fact, waterproof; and from the use of such word in any way, the effect of which tends or may tend to convey the belief that said product is impervious to water or its effects. (Apr. 10, 1941.)

3076. **Shoes—Professional Supervision, Indorsement, and Approval.**—Herbst Shoe Manufacturing Co., a corporation, engaged in the manufacture of 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.

Herbst Shoe Manufacturing Co., 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 forthwith from the use of the word "Doctor" or the abbreviation "Dr." in connection with the name or with any other word or words as a trade name or with any other word or words as a brand, designation for said products, or in any other way, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that said products are made in accordance with the design or under the supervision of a physician and contain special scientific or orthopedic features which are the result of medical determination or services. Said corporation also agreed to cease and desist from the use of the term "Official Physical Health Director" or of any other word, words or term of similar implication, the effect of which tends or may tend to convey the belief that shoes so referred to contain or have incorporated therein special or scientific features which have been approved, sponsored or endorsed by a director of physical health or one trained in physical education or related art. (Apr. 10, 1941.)

3077. Shoes—Professional Supervision.—A. O. Keehn, T. C. L. Keehn, and Leroy D. Keehn, copartners, trading under the firm name and style "Keehn Brothers," engaged, as wholesalers, in the sale and distribution of shoes 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.

A. O. Keehn, T. C. L. Keehn, and Leroy D. Keehn, in connection with the offering for sale, sale or distribution of their products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the word "Doctor" or the abbreviation "Dr." in connection with a name or with any other word or words as a trade name, brand or designation for said products, or in any other way, 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 said products are made in accordance with the design or under the supervision of a physician and contain special scientific or orthopedic features which are the result of medical determination or services. (Apr. 10. 1941.)

3078. **Shoes—Composition.**—Brown Shoe Co., Inc., a corporation, engaged in the manufacture of shoes and footwear and in the sale and distribution thereof under its said corporate name or under the trade name "Blue Ribbon Shoemakers" 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.

Brown Shoe Co., Inc., a corporation trading under its said name or as "Blue Ribbon Shoemakers" or under any other name, agreed, in connection with the advertisement, offering for sale, sale or distribution of its shoes in commerce, as commerce is defined by the Federal Trade Commission Act, to cease and desist forthwith from:

1. Using the word "Alligator," or any other word or words of similar import or meaning, to designate or describe shoes not made from the hide of an alligator, or otherwise representing that shoes made from other leathers or materials, are made from alligator hide; provided, however, that said word "Alligator" may be used to describe the finish of shoes which are made from other materials and which are finished or embossed to resemble alligator leather, when said word is immediately accompanied by another word or words clearly indicating that said designation refers only to the pattern embossed on such materials.

2. Representing that the materials or leathers of which said shoes are made are other than the actual materials or leathers used in such shoes. (Apr. 10, 1941.)

3079. **Women's Shoes—Composition.**—Marshall, Meadows & Stewart, Inc., a corporation, engaged in the manufacture of women's 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.

Marshall, Meadows & Stewart, Inc., in connection with the advertising, offering for sale, sale, or distribution of its shoes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. Using the word "Alligator," or any other word of similar import or meaning, to designate or describe shoes, or the trim or any part thereof, not made from the hide of an alligator, or otherwise representing that said shoes, the trim or any part thereof, made from other leathers or materials, is or are made from alligator hide; provided, however, that said word "Alligator" may be used to describe the finish of shoes, the trim or a part or parts thereof, which are or is made from other materials and which are or is finished or embossed to resemble alligator leather, when such word is immediately accompanied by another word or words clearly indicating that said designation refers only to the pattern embossed on such materials.

2. Representing that the material or leathers of which said shoes, trim or parts thereof are made are other than the actual materials or leathers used in the making of such shoes. (Apr. 10, 1941.)

3080. **Women's Shoes—Composition.**—Johnson, Stephens & Shinkle Shoe Co., a corporation, engaged in the manufacture of women's shoes 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.

Johnson, Stephens & Shinkle Shoe Co., in connection with the advertisement, offering for sale, sale, or distribution of its shoes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. Using the word "Alligator" or any other word of similar import or meaning, to designate or describe shoes not made from the hide of an alligator, or otherwise representing that shoes made from other leathers or materials are made from alligator hide; provided, however,

that said word "Alligator" may be used to describe the finish of shoes which are made from other materials and which are made finished or embossed to resemble alligator leather, when said word is immediately accompanied by another word or words clearly indicating that said designation refers only to the pattern embossed on such materials.

2. Representing that the materials or leathers of which said shoes are made are other than the actual materials or leathers used in such shoes. (Apr. 11, 1941.)

3081. **Wood Preservative and Insect Destroyer—Government Recognition and Patent.**—Carbolineum Wood Preserving Co., a corporation, engaged in the sale and distribution in interstate commerce of a preparation designated "Carbolineum," allegedly for use as a wood preservative and for the destruction of certain insects, 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.

Carbolineum Wood Preserving Co., in connection with the sale or offering for sale of its product in commerce as defined by the Federal Trade Commission Act, agreed to forthwith cease and desist from representing, directly or inferentially, that the United States Patent Office has recognized any advantages, exclusive or otherwise, of "Carbolineum" or "Avenarius Carbolineum" as a wood preservative, a mite killer, or for any other use or purpose; or that the trademark "Carbolineum" was granted to or issued in the name of Carbolineum Wood Preserving Co. by the United States Patent Office. (Apr. 10, 1941.)

3082. **Hosiery—Mills.**—Joseph A. Kitzmiller, an individual, trading as Reading Hosiery Mills, engaged in the business of selling hosiery in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Joseph A. Kitzmiller, in connection with the advertisement, 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 of the word "Mills" as part of his trade name, and from the use of the word "Mills" or "Mill" in any way so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that he makes or manufactures said products, or that he actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured. (Apr. 15, 1941.)

3083. **Electrical Heating Pads—Qualities and Results.**—Manning, Bowman & Co., a corporation, engaged in the sale and distribution in interstate commerce, of electrical appliances including heating pads, 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.

Manning, Bowman & Co., in connection with the sale or offering for sale of its said electrical heating pads in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the words "three heats," or "3 Heat Pad" as descriptive of such pads or the switches used therewith; and from the use of the words "three heats," "3 Heat Pad," "three degrees of warmth," or "Low, Medium and High heats," or other word or words of similar implication or meaning, in any way so as to import or imply or the effect of which tends or may tend to convey the belief that said electrical heating pads are capable of maintaining, or that the operation of such switches effects or results in maintaining, three different distinct temperatures or degrees of heat. (Apr. 15, 1941.)

3084. **Shoes—Professional Supervision.**—C. W. Marks Shoe Co., a corporation, engaged as a wholesaler in the sale and distribution of shoes in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

C. W. Marks Shoe Co., 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 forthwith from the use of the word "Doctor" or the abbreviation "Dr." in connection with a name or with any other word or words as a trade name, brand, or designation for said products, or in any other way, 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 made in accordance with the design or under the supervision of a physician and contain special scientific or orthopedic features which are the result of medical determination or services. (Apr. 15, 1941.)

3085. **Shoes—Composition.**—International Shoe Co., a corporation, engaged in the manufacture of shoes and footwear 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.

International Shoe Co., a corporation, trading under its said corporate name or under any of its various trade names or under any other name, agreed, in connection with the advertisement, offering for sale, sale, or distribution of its shoes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from—

1. Using the word "Alligator" or any other word or words of similar import or meaning, to designate or describe shoes not made from the hide of an alligator, or otherwise representing that shoes made from other leathers or materials, are made from alligator hide; provided, however, that said word "Alligator" may be used to describe the finish of shoes which are made from other materials and which are finished or embossed to resemble alligator leather, when said word is immediately accompanied by another word or words clearly indicating that said designation refers only to the pattern embossed on such materials.

2. Representing that the materials or leathers of which said shoes are made are other than the actual materials or leathers used in such shoes. (Apr. 15, 1941.)

3086. **Electrical Heating Pads—Qualities and Results.**—Landers, Frary & Clark, a corporation, engaged in the sale and distribution of electrical heating pads 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.

Landers, Frary & Clark, in connection with the sale or offering for sale of its said electrical heating pads in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from statements or representations the effect of which tends or may tend to convey the belief or impression that such heating pads are capable of maintaining, or that the operation of the switches used therewith effects or results in maintaining, different, distinct temperatures or degrees of heat. (Apr. 16, 1941.)

3087. **Women's Shoes—Composition.**—Samuels Shoe Co., Inc., a corporation, engaged in the manufacture of women's shoes 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.

Samuels Shoe Co., Inc., in connection with the advertisement, offering for sale, sale and distribution of its shoes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from:

1. Using the word "Alligator" or any word of similar import or meaning to designate or describe shoes not made from the hide of an alligator, or otherwise representing that shoes made from other leathers or materials are made from alligator hide; provided, however, that the said word "Alligator" may be used to describe the finish of shoes which are made from other materials and which are finished or embossed to resemble alligator leather, when said word is immediately accompanied by another word or words clearly indicating that the said designation refers only to the pattern embossed on such materials.

2. Representing that the materials or leathers of which said shoes are made are other than the actual materials or leathers used in such shoes. (Apr. 16, 1941.)

3088. **Hosiery and Lingerie Preparation—Qualities, Properties, or Results.**—Frank L. Moscow, trading as Scientific Products Co., engaged in the business of packaging a preparation intended for use as a treatment for hosiery and lingerie and which he sells 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 L. Moscow in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from—

1. The use in any way of the words "No More Runs" 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 use of said preparation on fabrics, as hosiery or lingerie, will eliminate the possibility of or prevent runs in such fabrics.

2. Stating or representing that said preparation will make fabrics treated therewith fade-proof. (Apr. 17, 1941.)

3089. **Women's Shoes—Composition.**—Geo. E. Keith Co., a corporation, engaged in the manufacture of women's shoes 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 de-

sist from the alleged unfair methods of competition in commerce as set forth therein.

Geo. E. Keith Co. in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from—

1. Using the word "Alligator" or any other word of similar import or meaning to designate or describe shoes not made from the hide of an Alligator, or otherwise representing that shoes made from other leathers or materials are made from Alligator hide: Provided, however, that the said word "Alligator" may be used to describe the finish of shoes which are made from other materials and which are finished or embossed to resemble Alligator leather, when said word is immediately accompanied by another word or words clearly indicating that said designation refers only to the pattern embossed on such materials.

2. Representing that the materials or leathers of which said shoes are made are other than the actual materials or leathers used in such shoes. (Apr. 17, 1941.)

3090. **Machinery and Tools—Foreign Government Connection.**—Hasco, Inc., a corporation, engaged in the business of purchasing machinery and tools, has caused such machinery and tools purchased by it from dealers in such products to be shipped across State lines from the various States in which the products were located to its own place of business in the State of New Jersey and thereafter has sold the products to foreign powers engaged in the European war, in competition with other corporations and with individuals, firms and partnerships likewise engaged, and has entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Hasco, 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 the use of the words "Imperial Air Industries" either alone or with the words "American Purchasing Office" as a trade name in connection with the advertisement, purchasing, sale or distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act; and from the use of the word "Imperial" either alone or in connection or conjunction with the words "Air Industries" or with the words "American Purchasing Office" or with any other words or in any way so as to import or imply or the effect of which tends or may tend to convey the belief or impression that the said corporation is sponsored by or is officially connected with a foreign government. (Apr. 18, 1941.)

3091. **Shoes—Source or Origin.**—A. Freedman & Sons, Inc., a corporation, engaged in the manufacture of shoes and in the sale and shipment 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.

A. Freedman & Sons, 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, as a stamp, brand or label upon said shoes or the boxes in which they are placed for sale and sold, or in any other way, of the words "Designed by (an) English Bootmaker" as descriptive of shoes which are not designed by an English bootmaker; and from the use of the said quoted words or the words "John McVey, Ltd." either alone or in connection with the words "Distinctively English" or with any other words of similar implication, so as to import or imply or the effect of which tends or may tend to convey the belief or impression that the said shoes are either designed by an English bootmaker or are made or manufactured in England. (Apr. 22, 1941.)

3092. **Enamelware—Manufacture.**—Federal Enameling & Stamping Co., a corporation, engaged in the sale and distribution of enamelware, including enameled kitchenware, 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.

Federal Enameling & Stamping 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 or placing in the hands of others a means to represent, directly or inferentially, that any enamelware product, not completely covered with three separate coats or applications of enamel, is "triple coated" or that the enameling thereof consisted of the application of three separate coats of enamel. (Apr. 23, 1941.)

3093. **Electrical Heating Pads—Qualities and Results.**—Eagle Electric Manufacturing Co., Inc., a corporation, engaged in the sale and distribution of electrical appliances, including heating pads, 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 Electric Manufacturing Co., Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from the use of the words or symbols "Three Heat" or "3-Heat" as descriptive of such pads or the switches used therewith; and from the use of the words "Three Heat" or other word or words of similar implication or meaning in any way so as to import or imply or the effect of which tends or may tend to convey the belief that said electrical pads are capable of maintaining, or that the operation of such switches effects or results in maintaining, three different, distinct temperatures or degrees of heat. (Apr. 23, 1941.)

3094. **Hair Goods and Beauty Preparations—Qualities, Results, Safety, "Hand Made," and Comparative Value.**—Gustave Goldstein, an individual, trading as Humania Hair Goods & Specialty Co., engaged in the sale of hair goods and beauty preparations 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.

Gustave Goldstein in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist forthwith from directly or indirectly 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 by the Federal Trade Commission Act, and which advertising—

1. Represents that the preparations known as Apex Pomento and Humania Dandruff Treatment, or either thereof, will prevent or aid against the return of dandruff or will do more than remove dandruff which has already formed on the scalp.

2. Represents that the preparations known as Humania Dandruff Treatment and Amron New Hair Aid, or either thereof, will stop falling hair or keep it from coming out.

3. Represents that the preparation Apex Tar Oil, either alone or together with Apex Pomade, or the preparation Reliance Hair Pomade, or the preparation Henry's Pressing Oil, will cause or promote the growth of hair.

4. Represents that the preparation Humania Tar Jelly Shampoo will stimulate or animate the hair so as to cause it to grow.

5. Represents that the product Moorish Pomade will nourish or feed the skin, scalp or hair follicles.

6. Represents that the preparation Henry's Mystery Perfume possesses such powers, mystic or otherwise, that its use, either alone or in connection with High John the Conqueror Root, will bring luck, fortune, romance, love, or power to the user thereof.

7. Fails conspicuously to reveal therein, with reference to the preparation Magic Shaving Powder, the following:

CAUTION.—This product should not be used by those having a tender skin and should not be allowed to get into the eyes of the user.

and, with reference to the preparation Kongolene, the following:

CAUTION.—The use of this product may result in severe caustic action upon the skin with resulting burns.

Provided, however, That such advertisement need contain only the statement:

CAUTION.—Use only as directed on label, if and when the label on the product bears the first described caution conspicuously displayed thereon.

8. States or represents that the foundation of a wig offered for sale and sold by him is "hand made," when in fact it is machine sewed.

9. States or represents that hair, of a quality equal to that which he offers, is sold everywhere by others for double the price which he charges, when in fact hair of the same type and grade is sold on the competitive market for the same or approximately the same figure as that at which such hair is sold by the said Gustave Goldstein. (Apr. 25, 1941.)

3095. **Poultry Preparations—Qualities, Properties, or Results.**—Globe Laboratories, a corporation, engaged in the business of manufacturing numerous products and preparations including so-called "Combination R. T. Tablets," "Avi-Nic-Tol," "Poultry Mineral" and "Kome-Glo," and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Globe Laboratories 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 any way

1. That the preparation "Combination R. T. Tablets" would be effective to remove worms of all kinds from poultry, or that it would be of any value as a treatment for all species of worms. Further, in connection with the offering for sale or sale of said preparation, it agrees to cease and desist forthwith from disseminating any advertising matter which fails to conspicuously reveal therein that the use of said preparation will reduce both the number and the size of the eggs produced by the poultry to which it is administered.

2. That the preparation "Avi-Nic-Tol" would be effective as a general flock wormer for either large round worms or Cecal worms or would be an effective treatment for tapeworms.

3. That the preparation "Poultry Mineral" would be a source of essential minerals or would destroy worm eggs or germs of types detrimental to poultry or that it would be of value in the treatment, control, or prevention of the various diseases, or of any of the diseases, named in said advertising.

4. That the preparation "Kome-Glo" is necessary to keep birds in a healthy and vigorous condition or that it would be of use either as a preventive measure, control measure or cure for any type of poultry ailment, including parasitical infestations or infectious germs. (May 1, 1941.)

3096. **Electrical Heating Pads—Qualities and Results.**—The Lobl Manufacturing Co., a corporation engaged in the sale and distribution of electrical heating pads in commerce between and among various States of the United States, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

The Lobl Manufacturing Co. in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from the use of the words or symbols "3 Heat" as descriptive of such pads or the switches used therewith; and from the use of the words or symbol "3 Heat" or "Low, Med., High," or other words or symbols of similar implication or meaning, in any way so as to import or imply or the effect of which tends or may tend to convey the belief that said electrical heating pads are capable of maintaining, or that the operation of such switches effects or results in maintaining three different, distinct temperatures or degrees of heat. (May 1, 1941.)

3097. **Milk Filter Discs—History, Unique Nature Qualities, or Results.**—Schwartz Manufacturing Co., a corporation, engaged in the business of manufacturing various types of cotton goods products for the dairy industry, including a milk filter disc made of soft cotton fiber to be used in the straining of raw milk to remove therefrom particles of foreign matter, and in the sale of said milk filter discs under the trade designation "Perfection" 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.

Schwartz Manufacturing Co., in connection with the offering for sale, sale, or distribution of its "Perfection" milk filter discs in com-

merce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in its advertisements or advertising matter of whatever kind or description, or in any other way, of statements or representations, the effect of which conveys or tends or may tend to convey the impression or belief to purchasers that the said discs are new, that is to say, that they differ in any material or essential respect from discs which, for a number of years past, have been used in the industry to filter milk or that they have far greater surface contact and will always and under all circumstances filter ten gallons of milk in three minutes or that their use will result in cleaner milk than ever before. (May 1, 1941.)

3098. **Electrical Heating Pads—Qualities and Results.**—Glencoe Electric Corporation, engaged in the sale and distribution of electrical heating pads 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.

Glencoe Electric Corporation 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 words "Three Heat" as descriptive of such pads or the switches used therewith; and from the use of the words or phrases "Three Heat," "selective heat switch," "High-Medium-Low," or "three different temperatures," or other words or phrases of similar implication or meaning, in any way so as to import or imply, or the effect of which tends or may tend to convey the belief that said electrical heating pads are capable of maintaining, or that the operation of such switches effects or results in maintaining, three different, distinct temperatures or degrees of heat. (May 1, 1941.)

3099. **Detergent Preparation—Composition, Comparative Merits, and Qualities, Properties, or Results.**—Climalene Co., a corporation engaged in the sale and distribution of a detergent preparation designated "Climalene" 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.

Climalene Co., in connection with the sale and distribution in commerce, as defined by said Act, of its product, designated "Climalene" or any similar product whether sold under the same name or any other name or names, agreed to cease and desist from:

(*a*) Representations which import or imply or the effect of which is to cause the impression or belief that such product contains

ingredients or has detergent qualities not contained in or possessed by any other products, or that it is more efficacious as a detergent or cleansing agent than are all other products.

(*b*) Representing that its product affords protection to fabrics laundered therewith; or, unqualifiedly, that it is safe for delicate fabrics or that its use will not cause colors to fade.

(*c*) Representing that such product will "free" or remove all tarnish and stain from silver; or that it will polish silver without rubbing.

(*d*) Representing that its use results in the complete lathering of soap or will prevent completely the formation of "Soap scum."

(*e*) Representing that such product protects or saves all it touches, or protects, saves or preserves any surface, article, fabric, or material to which it is applied; or, unqualifiedly, that it is a safe detergent for use on floors, tiles, or linoleum. (May 2, 1941.)

3100. **Shoes for Babies and Children—Professional Supervision.**—Superior Shoe Co., Inc., a corporation, engaged in the manufacture of shoes for babies and children and in the sale thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Superior Shoe 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 the use of the word "Doctor" or the abbreviation thereof "Dr." either alone or in connection with a name or with any other word or words as a trade name, brand, or designation for said products, or in any other way, so as to import or imply or the effect of which tends or may tend to convey the belief to purchaser or prospective purchaser that said products are made in accordance with the design or under the supervision of a physician and contain special scientific or orthopedic features which are the result of medical determination or services. (May 2, 1941.)

3101. **Electrical Heating Pads—Qualities and Results.**—The Walker Co., a corporation, engaged in the sale and distribution of electrical heating pads 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.

The Walker Co. in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from the use of the words or symbols "3 Heat" as descriptive of such

pads or the switches used therewith; and from the use of the words or phrases "3 Heat" or "High, Medium, Low," or any other words or phrases of similar implication or meaning, in any manner so as to import or imply or the effect of which tends or may tend to convey the belief that such heating pads are capable of maintaining, or that the operation of the switches effects or results in maintaining, three different, distinct temperatures or degrees of heat. (May 2, 1941.)

3102. **Wall Paper Cleaner—Qualities, Properties, or Results.**—Unique Printed Products Co. trading as Crescent Products Co., engaged in the business of manufacturing a wall paper cleaner and other products which it sells and has sold 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.

Unique Printed Products Co. in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist forthwith from the use of the term "Non-Crumbling" as descriptive of said product, and from the use of the said term or of the statement "This cleaner does not crumble" or of any other statement or term of similar meaning or import, the effect of which tends or may tend to convey the belief that said product does not crumble when used on certain types of wall paper. (May 2, 1941.)

3103. **Insecticide—Qualities, Properties, or Results.**—Harry Douglas, trading as Magic Chemical Co., engaged in the sale and distribution of an insecticide, designated "Magic", in interstate commerce, in competition with other individuals and with corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Harry Douglas 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 words or phrases "Forever," "Rids Them" or "Never to Return," or other words or phrases of similar implication or meaning, in any way so as to import or imply or the effect of which tends or may tend to convey the belief that the use or application of such preparation will afford permanent protection against or prevent the return of bedbugs, cockroaches, or other insects. (May 5, 1941.)

3104. **Electrical Heating Pads—Qualities and Results.**—Varick Electric Manufacturing Co., Inc., a corporation, engaged in the sale and distribution of electrical heating pads 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.

Varick Electric Manufacturing Co., Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from the use of the words "Three Heats" as descriptive of such pads or the switches used therewith; and from the use of the words or phrases "Three Heats," "High, Medium, Low," "3 degrees of heat" or "3 heat switch," or other words or phrases of similar implication or meaning in any way so as to import or imply or the effect of which tends or may tend to convey the belief that said electrical heating pads are capable of maintaining, or that the operation of such switches effects or results in maintaining, three different, distinct temperatures or degrees of heat. (May 5, 1941.)

3105. **Fountain Pens and Pencils—Qualities, Composition, Manufacturer, Guarantee, Etc.**—Baldwin Co., Inc., is a corporation trading as Baldwin Pen Co., engaged in the sale and distribution of fountain pens and pencils in interstate commerce, in competition with other corporations 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.

Baldwin Co., Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from:

(*a*) Representing, directly or inferentially, that said pens are nonbreakable or have an ink capacity in excess of that of fountain pens generally; or that pens have iridium tips when, in fact, they are not tipped or pointed with iridium.

(*b*) Representing that it manufactures such fountain pens or that it actually owns and operates or directly and absolutely controls a factory or plant in which the same are manufactured or produced.

(*c*) The use of the word "Guarantee" or any other word or words of similar meaning in advertisements, printed matter or otherwise, 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, replacement or repair without charge within a stated period of time; or from issuing a guarantee for any period of time greater than reasonably can be estimated as the approximate usable existence of such products.

(*d*) Designating any representation or agreement as a guarantee, guaranty, or warranty which involves a service charge or calls for the payment of additional money by the purchasers of such merchandise. (May 6, 1941.)

3106. **Electrical Heating Pads—Qualities and Results.**—Fitzgerald Manufacturing Co. and Son-Chief Electrics, Inc., corporations, engaged in the sale and distribution of electrical heating pads, 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.

Fitzgerald Manufacturing Co. and Son-Chief Electric, Inc., in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist from the use of the words or symbols "3 Heats," "Three Heat" or "Low, Medium, High," as descriptive of such pads or the switches used therewith; and from the use of such words or symbols or any other words or symbols of similar implication or meaning in any way so as to import or imply or the effect of which tends or may tend to convey the belief that said electrical pads are capable of maintaining, or that the operation of such switches effects or results in maintaining, three different, distinct temperatures or degrees of heat. (May 6, 1941.)

3107. **Women's Coats, Suits, and Dresses—Manufacturer.**—Rogers Manufacturing Co., Inc., a corporation, engaged in the sale and distribution of women's coats, suits, and 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.

Rogers Manufacturing Co., Inc., agreed to cease and desist forthwith from the use of the word "Manufacturing" as a part of its corporate name or the trade name used by it in connection with the advertisements, offering for sale, sale or distribution in commerce, as commerce is defined by the Federal Trade Commission Act, of products which it does not make or manufacture; and from the use of the word "Manufacturers" or "Manufacturing" or the abbreviation thereof, "Mfg.," or the word "Factory" or the words "factory to you" or "Save the Middleman's profit," or any other word or words of similar meaning or implication, the effect of which tends or may tend to convey the belief that said corporation makes or manufactures the products sold by it or that it actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured when in fact, such is not the case. (May 7, 1941.)

3108. **Medicinal Preparation—Ailments and Qualities, Properties, or Results.**—Felix J. Bentz, an individual trading as Dr. Bentz Laboratory, engaged in the sale and distribution of a medicinal preparation des-

ignated "Regulator 68B," 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.

Felix J. Bentz, agreed in connection with the sale in commerce, as commerce is defined by the Federal Trade Commission Act, or the dissemination of advertising, by the means and in the manner above set forth of the preparation designated "Regulator 68B," or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under such name or any other name or names, he will forthwith cease and desist from representing that toxic poisons in the blood stream are the result of or caused by undigested food stagnating or fermenting in the intestinal tract; that said preparation is a blood cleanser; that by its use poisons will be eliminated from the system; that it regulates or stimulates the bowels, liver, or digestive system to normal activity or regularity; or that its therapeutic properties are other than that of a laxative or cathartic. (May 7, 1941.)

3109. **Yarn—Mills and Composition.**—Herman Rosenberg, an individual trading as Jeri Yarn Mills, engaged in the sale and distribution of yarn 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.

Herman Rosenberg 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 "Mills" as part of his trade name; and the use of the word "Mills" or any other word or words 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 he makes or manufactures the product sold by him or that he actually owns and operates or directly and absolutely controls a mill, plant, or factory in which such products are made or manufactured.

(*b*) advertising, branding, labeling, invoicing, selling, or offering for sale yarn or other products composed in whole or in part of rayon without clearly and unequivocally disclosing such rayon content; and, when the product is composed in part of rayon, and in part of a material or materials other than rayon, from failing to disclose each constituent fiber or material by name in the order of its predominance by weight, beginning with the largest single constituent.

(*c*) the use of the words "Worsted," "Tweed" or any other word connoting wool to designate or describe a product, which is not composed of wool; or the use of the word "Cashmere" to designate or describe a product not composed of the hair or fleece of the Cashmere goat.

Provided, That if a product is composed in part of either wool or cashmere and the words "Worsted," "Tweed" or other wool connoting word is used properly to describe such wool product, or the word "Cashmere" is used properly to describe such cashmere content, then in that case the said words "Worsted," "Tweed," or other wool connoting word, or the word "Cashmere" shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to accurately describe each constituent fiber or material of which the product is composed in the order of its predominance by weight, beginning with the largest single constituent.

It is further understood that no provision contained in this agreement, so far as the same pertains to wool products, shall be construed as authorizing or permitting, after July 14, 1941, the labeling of any wool product in any manner other than in strict conformity with the provisions of the Wool Products Labeling Act of 1939. (Apr. 22, 1941.)

3110. Electrical Heating Pads—Qualities, Results, and Composition.—General Electric Co., a New York corporation, engaged in the sale and distribution in interstate commerce of electrical appliances and equipment, including heating pads, 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 Electric Co., in connection with the sale or offering for sale of its said electrical heating pads in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from:

(*a*) The use of the words "Three Heats" as descriptive of such pads or the switches used therewith; and from the use of the words or phrases "Three Heats," "Three Heat Switch" or "Low, Medium or High Heat," or other words or phrases of similar implication or meaning, in any way so as to import or imply or the effect of which tends or may tend to convey the belief that said heating pads are capable of maintaining, or that the operation of such switches effects or results in maintaining, three different, distinct temperatures or degrees of heat.

(*b*) The use of the word "eiderdown" to designate or describe a product not composed of down obtained from the Eider duck, and from the use of the word "eiderdown" or other word or words of

similar implication or meaning in any way so as to convey the impression or belief that such product is composed of eiderdown, as the term generally is recognized and understood.

(*c*) Advertising, branding, labeling, invoicing, selling, or offering for sale any product composed in whole or in part of rayon without clearly disclosing, by the use of the word "Rayon," the fact that such product is composed of or contains rayon; and, when the product is composed in part of rayon and in part of fibers or materials other than rayon, from failing to disclose each constituent fiber in the order of its predominance by weight, beginning with the largest single constituent, in immediate connection or conjunction with and in type equally conspicuous as the word "Rayon." (May 7, 1941.)

3111. **Men's Neckwear—Composition.**—Forster Neckwear Co., Inc., a corporation, engaged in the sale and distribution of men's neckwear 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.

Forster Neckwear Co., Inc., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(*a*) the use of the word "silk" or "Imported silk" or any other word or coined words connoting silk in or on advertising trade literature, labels, invoices, or otherwise, to designate or describe fabrics or merchandise not composed of silk, the product of the cocoon of the silk worm. If the products are composed in part of silk and in part of some other fiber material, and the word "silk" or similar words are used to refer to the silk content of such products, then such word, whenever used, shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that the products are not composed wholly of silk. If the fiber other than silk constitutes the major content of such product, the name of the predominating material shall precede the word "silk," as for example, "Cotton and Silk."

(*b*) Advertising, branding, labeling, invoicing, selling, or offering for sale, neckwear or other products as "Imported Fabrics" which are composed in whole or in part of rayon without clearly disclosing by the use of the word "rayon," the fact that such products are composed of in part or contain rayon; and, when the product is composed in part of rayon and in part of fibers or materials other than rayon, from failing to disclose each constituent fiber, in the order of its predominance, by weight, beginning with the largest single constituent in immediate connection or conjunction with and in type equally conspicuous as the word "rayon." (May 12, 1941.)

3112. **Beauty Supplies and Equipment—Value, Price, Qualities, Properties, or Results, Composition, Business Policy, Weight, Etc.**—Hec Barth, Samuel Barth, and Mrs. Hec Barth, copartners, trading as General Beauty Products Co., engaged primarily in the business of selling, pursuant to mail orders, beauty supplies and equipment 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.

Hec Barth, Samuel Barth, and Mrs. Hec Barth, 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 from:

1. Stating or representing that any product offered for sale or sold by them has an alleged valuation which is exaggerated or in excess of the marketable price thereof, that is to say, is higher than the price for which said product or competitive products of comparable value is or are customarily sold in the usual course of business.

2. The use of any word as part of the trade name for, or any statement or representation relating to, the product designated "Dandruff Eradicator" as to import or imply or the effect of which tends or may tend to convey the belief or impression that said product, when locally applied to the scalp, will eradicate, remove, or destroy dandruff or promote the growth of hair or feed or nourish dry scalps.

3. The use of the hyphenated words "Crystal-Sheen" either alone or in connection with the particular label and design of the container of its hair rinse product, or in any other way, the effect of which tends or may tend to convey the belief or impression to purchasers or prospective purchasers that the said product is the widely and favorably known "Sparkle-Sheen" hair rinse, the competitive product referred to in Paragraph Two in stipulation.

4. The use of the word "Lanoleen" as a brand name for their emulsion or of any other phonetic spelling of the word Lanolin, either alone or in connection or conjunction with any other word or words, or in any other way, so as to import or imply or the effect of which tends or may tend to convey the belief or impression that said product is in fact a Lanolin product or that the Lanolin content of said product is of such substantiality as to contribute any value thereto.

5. Stating or representing that they "buy for cash" so as to import or imply that they always follow such policy, when in fact, they do not always buy for cash.

6. The use of the legend "Weight 4 oz." in connection with the illustration of a product or of any other weight indication in connection with their products, the effect of which tends or may tend to convey the belief to purchasers that such weight indication refers to the weight of the contents of the product, when in fact, such weight indication actually refers to the mailing weight of the product. (May 13, 1941.)

3113. **Textile Fabrics—Composition.**—Irving Roth and Arthur Bassin, copartners, trading as Vogue Silks, engaged in the sale and distribution of textile fabrics 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.

Irving Roth and Arthur Bassin, in connection with the sale and offering for sale and distribution of their textile fabrics in commerce as defined by the Federal Trade Commission Act, agreed they will forthwith cease and desist from:

(*a*) The use of the words "Pure Dye" or any other word or words connoting silk, to designate or describe a product which is not composed of silk. If the product is composed in part of silk and in part of fibers or material other than silk, and the words "Pure Dye" or other silk connoting words are used properly to describe such silk content, then the words "Pure Dye" or other silk connoting words, whenever used, shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to accurately designate each constituent fiber or material of which the product is composed, in the order of its predominance by weight, beginning with the largest single constituent.

(*b*) Advertising, branding, labeling, invoicing, selling, or offering for sale products composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or materials other than rayon, from failing to disclose each constituent fiber, in the order of its predominance by weight beginning with the largest single constituent, in immediate connection or conjunction with and in type equally conspicuous as the word "rayon." (May 14, 1941.)

3114. **Electrical Heating Pads—Qualities and Results.**—Knapp-Monarch Co., a corporation, engaged in the sale and distribution of electrical equipment, including heating pads, 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.

Knapp-Monarch Co., in connection with the sale or offering for sale in commerce as defined by the Federal Trade Commission Act of its electrical heating pads not equipped or provided with three or more adequate thermostatic or other heat controls calibrated for three different, distinct temperatures or degrees of heat, agreed to cease and desist from the use of the words "three heat" as descriptive of such pads or the switches used therewith; and from the use of the words or phrases "three heat," "three distinct heats," "three heat switch" or "low, medium, high," or other words or phrases of similar implication or meaning in any way so as to import or imply or the effect of which tends or may tend to convey the belief that said electrical heating pads are capable of maintaining, or that the operation of such switches effects or results in maintaining, three different, distinct temperatures or degrees of heat. (May 14, 1941.)

3115. Electrical Heating Pads—Qualities and Results.—Dominion Electrical Manufacturing, Inc., a corporation, engaged in the sale and distribution of electrical equipment including heating pads, 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.

Dominion Electrical Manufacturing, Inc., in connection with the sale or offering for sale, in commerce as defined by the Federal Trade Commission Act, of its electrical heating pads not equipped or provided with adequate thermostatic or other heat controls calibrated for three different, distinct temperatures or degrees of heat, agreed to cease and desist from the use of the words "Three heats" as descriptive of such pads or the switches used therewith; and from the use of the words or phrases "Three heats" or "Low, Medium, High" or other words or phrases of similar implication or meaning so as to import or imply or the effect of which tends or may tend to convey the belief that said electrical heating pads are capable of maintaining, or that the operation of such switches effects or results in maintaining three different, distinct temperatures or degrees of heat. (May 16, 1941.)

3116. Reducing Girdle—Qualities, Properties, or Results.—LaVel Co., a corporation, engaged in the sale and distribution of a number of types of foundation garments, including a so-called "Sheer Mold Reducing Girdle," in interstate commerce, causing said "reducing

girdle" to be sold under its adopted trade name "Sheer Mold Company," 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.

LaVel Co., whether trading under the name "Sheer Mold Company" or under any other name, in connection with the offering for sale, sale or distribution of its garments or girdle in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use, in advertisements or printed matter employed by it or furnished by it to others for their use, of the word "Reducing" as part of the trade name for said product, and from the use of the word "Reducing" or of any other word or words of similar meaning or implication, as descriptive of said product or of the accomplishments which purportedly result from its use 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 product 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. (May 20, 1941.)

3117. **Reducing Girdle—Qualities, Properties, or Results.**—General Advertising Agency, Inc., a corporation, engaged in the preparation of advertising matter for and in the dissemination thereof in connection with, its clientele in interstate commerce, for the purpose of inducing or which is likely to induce the purchase of products offered for sale and sold by its clientele in commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, in similar enterprises involving the circulation and distribution of advertising to induce or which is likely to induce the purchase of advertised merchandise, entered the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

General Advertising Agency, Inc., in connection with the dissemination in commerce, as commerce is defined by the Federal Trade Commission Act, of advertising matter of whatever kind or description relating to the so-called Sheer Mold Reducing Girdle of one of its customers, agreed to cease and desist forthwith from the use in such advertising of the word "Reducing" as part of the trade name for said garments, and from the use of the word "Reducing" or of any other word or words of similar meaning or implication as descriptive of the said garment or of the accomplishments which purportedly result from its use, 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 said garment 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. (May 20, 1941.)

3118. **Curtain Stretchers—Unique and Qualities.**—Quaker Stretcher Co., a corporation, engaged in the sale and distribution of curtain stretchers 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.

Quaker Stretcher Co., in connection with the sale or offering for sale of curtain stretchers in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from any representation, either by printed statement, pictorial illustration or otherwise, the effect of which is to cause or may cause the impression or belief that curtain stretchers are equipped with ball point pins when, in fact, they are not so equipped; or that the pins used in stretchers cannot loosen or come out when in fact, they can loosen and come out. (May 19, 1941.)

3119. **Electrical Heating Pads—Qualities and Results.**—Westinghouse Electric & Manufacturing Co., a corporation, engaged in the sale and distribution of electrical equipment, including heating pads, 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.

Westinghouse Electric & Manufacturing Co., in connection with the sale or offering for sale in commerce as defined by the Federal Trade Commission Act, of its electrical heating pads not equipped or provided with adequate thermostatic or other heat controls calibrated for three different, distinct temperatures or degrees of heat, agreed to cease and desist from the use of the words "3 heat," as descriptive of such pads or the switches used therewith; and from the use of the words or phrases "3 heat," "Three-heat switch," or "low, medium, and high," or other words or phrases of similar implication or meaning so as to import or imply or the effect of which tends or may tend to convey the belief that said electrical heating pads are capable of maintaining, or that the operation of such switches effects or results in maintaining, three different, distinct temperatures or degrees of heat. (May 19, 1941.)

3120. **Women's Hosiery—Composition and Quality.**—Victor Silk Hosiery Corp., a corporation, engaged in the manufacture, sale, and distribution of women's hosiery in interstate commerce, in compe-

tition with other corporations and individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Victor Silk Hosiery Corp., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from:

(*a*) The use of the word "silk" as part of its corporate or trade name and the use of the word "silk" or any other word or coined words connoting silk in or on advertising, trade literature, labels, invoices, or otherwise in designating or describing its stockings or merchandise not composed wholly of silk, the product of the cocoon of the silk worm. If the products are composed in part of silk and in part of some other fiber material and the word "silk" or similar words are used to refer to the silk content of such products, then such word or words, whenever used, shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that the products are not composed wholly of silk. If the fiber other than silk constitutes the major portion of such product, the name or predominating material shall precede the word "silk," as for example "rayon and silk."

(*b*) Advertising, branding, labeling, invoicing, selling, or offering for sale hosiery or other products which are composed in whole or in part of rayon without clearly disclosing by the use of the word "rayon" the fact that such products are composed of in part or contain rayon. And when the product is composed in part of rayon and in part of fiber or materials other than rayon, failing to disclose each constituent fiber in the order of its predominance, by weight, beginning with the largest single constituent in immediate connection or conjunction with and in type equally conspicuous as the word "rayon."

(*c*) Advertising, branding by transfer or otherwise labeling, invoicing, selling, or offering for sale hosiery marked "42 gauge" when in truth and in fact said hosiery is not "42 gauge." (May 20, 1941.)

3121. **Shoes—Composition.**—Wohl Shoe Co., a corporation, engaged in the business of selling shoes at wholesale and retail, 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.

Wohl Shoe Co. 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. Using the word "Alligator" either alone or in connection with the word "Calf" or of any other word or words of similar meaning or import to designate or describe such of said products as are not made from the hide of an alligator, or otherwise representing that products made from other leathers or materials are made from alligator hide; provided however, that the said word "Alligator" may be used to describe the finish of products which are made from other materials and which have been finished or embossed to resemble alligator leather, when such word is immediately accompanied by another word or words clearly indicating that said designation refers only to the pattern embossed on such materials.

2. Representing that the materials or leathers of which said products are made are other than the actual materials or leathers used in such products. (May 21, 1941.)

3122. **Shoes—Composition.**—Stern Brothers, a corporation, engaged in the business of operating a department store in New York City from which it sells and has sold its merchandise, including shoes, at retail 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.

Stern Brothers, 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 forthwith from

1. Using the word "alligator" or any other word or words of similar import or meaning, to designate or describe such of said products as are not made from the hide of an alligator, or otherwise representing that products made from other leathers or materials are made from alligator hide; provided, however, that the word "alligator" may be used to describe the finish of products which are made from other materials and which are finished or embossed to resemble alligator leather, when said word is immediately accompanied by another word or words clearly indicating that said designation refers only to the pattern embossed on such materials.

2. Representing that the materials or leathers of which said products are made are other than the actual materials or leathers used in such products. (May 21, 1941.)

3123. **Medicinal Preparation—Qualities, Properties, or Results, and Prices.**—Oscar F. Fox and W. Harvey Patterson, trading as "Ne-Wa-Te Company," engaged in the sale and shipment in interstate commerce of a medicinal preparation known as "Ne-Wa-Te Native Herbs,"

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.

Oscar F. Fox and W. Harvey Patterson in connection with the sale and distribution of their product in commerce, as defined by said Act, agreed to cease and desist, directly or inferentially, from:

(*a*) Representing that the preparation "Ne-Wa-Te Native Herbs" is an effective treatment or competent remedy for diseases of the stomach, liver, kidney, bowels, and rundown condition; for biliousness, constipation, colds, piles, kidney and bladder weakness, pain in the back, neck, shoulders, hips or side, heartburn, heart palpitation, bilious or sick headache, sour and sick stomach, belching, bloating, gas on the stomach, and female complaints; that said preparation will rid the system of lumbago and certain forms of rheumatism; ulcers of the stomach and bowels, lowered vitality, pimples and blemishes of the skin, foul breath, etc.; from representing that said preparation will help to avoid appendicitis, catarrh, fevers, asthma, indigestion, and other ailments or any other affliction or condition whatsoever except as a purgative or laxative and which should be sold with a caution notice.

(*b*) Representing as the customary or regular price or prices of their product prices which are fictitious and in excess of the price at which such products are customarily and regularly sold or offered for sale in the usual course of business. (May 23, 1941.)

3124. **Fountain Pens—Source or Origin, Guaranteed, Price, and Manufacturer.**—Joseph Starr and William Starr, copartners, trading as Starr Pen Co. and as Waltham Pen Co., engaged in the sale and distribution of fountain pens in interstate commerce, in competition with other partnerships and with 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.

Joseph Starr and William Starr, and each of them, in connection with the sale or offering for sale of fountain pens in commerce as defined by the Federal Trade Commission Act, agreed to forthwith cease and desist from:

(*a*) The use of the word or name "Waltham" in connection with or as part of their trade name or as a brand or label for such merchandise.

(*b*) The issuance and dissemination of "Life Time Service" certificates or "Guaranteed for Life" certificates as pertaining to such merchandise; or the designation of any representation or agreement

as a guarantee, guaranty or warranty which involves a service charge or calls for the payment of additional money by the purchasers of said merchandise.

(*c*) The use of or furnishing others with a means to use the price figures "$5.00" or any other amount which purports to be the retail selling price of such pens, when in fact, such indicated retail selling price is fictitious or in excess of the price customarily asked for said pens in the usual course of retail trade.

(*d*) Representing that they manufacture such fountain pens or that they actually own and operate or directly and absolutely control a factory or plant in which the same are manufactured or produced. (May 23, 1941.)

3125. **Furniture—Nature of Manufacture and Manufacturer.**—Curtis Furniture Co., a New York corporation, engaged in the sale and distribution of household furniture 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.

Curtis Furniture Co., in connection with the advertisement, offering for sale, sale or distribution of its furniture in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from stating or representing that the said furniture is "hand-constructed" or "hand-carved" or that the said furniture is made or manufactured by the said corporation, that is to say, that the articles of furniture sold by the said corporation in commerce as aforesaid are made or manufactured in factories or plants owned and operated or controlled by the said corporation, when in fact, such articles of furniture have been made by others either complete or except as to the upholstering of such articles. (May 23, 1941.)

3126. **Hosiery and Lingerie—Composition, Value, Prices, Etc.**—Holland E. Shoaf and Robert Shoaf, trading as Paramount Hosiery Co., engaged in the sale and distribution of hosiery and lingerie in 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.

Holland E. Shoaf and Robert Shoaf 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 "silk," "satin," "crepe," "chiffon" or any other word or words connoting silk, to designate or describe a prod-

uct which is not composed of silk. If the product is composed in part of silk and in part of fibers or material other than silk, and the word "silk" or other silk connoting word is used properly to describe such silk content, then the word "silk" or other silk connoting word, whenever used, shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to accurately designate each constituent fiber or material of which the product is composed, in the order of its predominance by weight, beginning with the largest single constituent.

(*b*) Advertising, branding, labeling, invoicing, selling, or offering for sale products composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or materials other than rayon, from failing to disclose each constitutent fiber, in the order of its predominance by weight beginning with the largest single constituent, in immediate connection or conjunction with and in type equally conspicuous as the word "rayon."

(*c*) Quoting or representing as the value of their products, values or prices which are in fact fictitious and in excess of the prices at which similar merchandise of comparable quality customarily is offered for sale and sold in the usual course of business.

(*d*) The use of the word "slightly" in connection with or as modifying the word "imperfect" or in any manner so as to import or imply that imperfections in hosiery or other wearing apparel are slight or negligible when, in fact, the extent, degree or nature of such imperfections are such as to be improperly designated or referred to as "slightly" or slight. (May 29, 1941.)

3127. **Textile Fabrics—Composition.**—Walter-Lewis Woolen Corp., a corporation, engaged in the sale and distribution of textile 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.

The term "wool" as defined by the Wool Products Labeling Act of 1939 means the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may include the so-called specialty fibers from the hair of the camel, alpaca, llama and vicuna) which has never been reclaimed from any woven or felted wool product.

Walter-Lewis Woolen Corp., in connection with the sale or offering for sale in commerce as defined by the Federal Trade Commission Act, of textile fabrics composed predominately of fibers other than camel's hair, agreed to forthwith cease and desist from the use in its

brands, labels, or other trade indicia of the word or words "Camels" or "Camels Hair" or a depiction of a camel, or of any other words or representations of similar implication or meaning in any way so as to import or imply or the effect of which tends or may tend to cause the impression or belief that camel's hair constitutes a substantial proportion of the fiber content of such fabric:

Provided, however, That the words "Camels Hair" or other word or words properly descriptive of such so-called specialty fiber content of said fabric may be used to describe the so-called specialty fiber content when immediately accompanied by a word or words printed in equally conspicuous type accurately designating each constituent fiber or material in the order of its predominance by weight and specifying the proportions or percentage of such so-called specialty fiber as, for example, "Wool and Camels Hair, Camels Hair 1%."

It is further understood that no provision contained in this agreement, so far as the same refers to wool products, shall be construed as authorizing or permitting, after July 14, 1941, the labeling of any wool product in any manner other than in strict conformity with the provisions of the Wool Products Labeling Act of 1939. (May 29, 1941.)

3128. **Goat's Milk Products—Comparative Merits, Indorsements, Qualities, Properties, or Results, Etc.**—Cornelius J. King, an individual, trading under the name and style of "King's Goat Milk Laboratories" engaged in the manufacture of various products composed either entirely or in part of goat's milk, and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Cornelius J. King, in connection with the sale and distribution of said products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from stating or representing, or from the use of any statement or representation, the effect of which tends or may tend to convey the belief—

1. That goat's milk contains far more or, in fact, any more of Vitamins A, B, C, D, and G than does cow's milk.

2. That goat's milk is alkaline in reaction.

3. That the fat globules in goat's milk are in more perfect emulsion than in any other milks, or that they are usually digested in 20 minutes.

4. That goat's milk, as compared with the other more available milks, stands preeminent as a food choice in nutritional therapeutics,

5. That hospitals and clinics in America and Europe generally prescribe goat's milk as a food remedy in infant and adult feeding for many chronic and acute diseases.

6. That the findings of eminent authorities on tuberculosis support or substantiate such alleged claims or representations that persons suffering from tuberculosis can be restored to normal health or cured through the use of goat's milk as an essential diet or as part of the diet, or that goat's milk is actually superior, safer, and better to use than other milks.

7. That no child who was fed on plenty of goat's milk ever had rickets or anemia.

8. That the use of goat's milk is a competent treatment for tubercular bones or eczema.

9. That goat's milk is more fitted or suitable in infant and child feeding than cow's milk, or that it is the best substitute for human milk in such feeding.

10. That goat's milk contains more or a larger variety of vitamins than does cow's milk.

11. That goat's milk is more nutritious or richer in vitamins than cow's or other milk.

12. That the use of goat's milk in the treatment of stomach or intestinal ulcers will obviate the necessity of surgical operations in ulcer cases generally.

13. That goat's milk is an essential food or therapeutic agent in the treatment of diabetes.

14. That goat's milk is an ideal food for most cases of colitis, arthritis, anemia, nervousness, loss of weight, run-down condition, constipation, tuberculosis, ulcerated stomach, nervous indigestion, babies, pernicious anemia, eczema, sugar diabetes, convalescence. (May 29, 1941.)

3129. **Men's Clothing—Prices or Values.**—Chester Krone, an individual trading as National Woolen Co., engaged in the sale and distribution of men's clothing 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.

Chester Krone, in connection with the sale or offering for sale of his men's suits or other commodities in commerce as defined by the Federal Trade Commission Act, agreed he will forthwith cease and desist from representing as the customary or regular prices or values thereof prices or values which are in fact fictitious and in excess of

the prices at which his said commodities are customarily offered for sale and sold in the usual course of business. (May 29, 1941.)

3131.[1] **Coal Tar Hair Dye Preparations—Safety.**—A. Rhodes Co., Inc., a corporation, engaged in the business of manufacturing two coal tar hair dye products, one called "Rhodes' Quick Color for Gray Hair" in A and B solutions, the other "Rhodes' Shampoo Tint for Gray Hair" in the form of tablets and a peroxide to be used as a bleach. It also manufactures a hair dye called "Rhodes' Reju-Vena," a solution containing metallic salts, and has sold 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.

A. Rhodes Co., Inc., in connection with the dissemination of advertising by the means and in the manner above set out of the said coal tar hair dye preparations designated "Rhodes' Quick Color for Gray Hair" and "Rhodes' Shampoo Tint for Gray Hair," or any other preparation of substantially the same composition, or possessing substantially the same properties, whether sold under such names or any other name, it will forthwith cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

"CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness."

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label."

if and when such label bears the first-described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for such preliminary testing before each application.

The said corporation also agreed that it will cease and desist forthwith from disseminating by the means and in the manner above set out any advertising of its product called "Rhodes' Reju-Vena" which fails to conspicuously reveal therein a cautionary statement to the effect that said product is not to be used under certain conditions or circumstances.

Provided, however, That such advertising need contain only the statement:

[1] Stipulation 3130 was not accepted until after May 31, 1941, and is consequently not included at this point but is published in the ensuing volume.

"CAUTION.—Use only as directed on label."

if and when such label bears the above described cautionary statement conspicuously displayed thereon. (May 21, 1941.)

3132. **Coal Tar Hair Dye Product—Safety.**—George Kremer, trading as Roux Distributing Co., engaged in the sale and distribution of a coal tar hair dye product designated "Roux Shampoo Tint" 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.

George Kremer, in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist forthwith from disseminating, directly or indirectly, any advertisements which fail conspicuously to reveal therein the following:

"CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness."

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label."

if and when such label bears the first-described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

3133. **Coal Tar Hair Dye Preparation—Safety.**—Norman W. Siebras, an individual, trading as Lady Lennox Co., engaged in the business of selling a certain coal tar hair dye product known as "Lady Lennox Hair Coloring" 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.

Norman W. Siebras, in connection with the dissemination of advertising by the means and in the manner above set out of the said coal tar hair dye preparation designated "Lady Lennox Hair Coloring," or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, agreed to forthwith cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

"CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness."

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label."

if and when such label bears the first-described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

3134. **Coal Tar Hair Dye Preparation—Safety.**—Clifford S. Donnell, an individual, engaged in the sale and distribution under the trade name "Queen Ann Manufacturing Company" of a coal tar hair dye preparation designated "Queen Ann Liquid Hair Coloring" 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.

Clifford S. Donnell, in connection with the dissemination of advertising by the means and in the manner above set out of the said coal tar hair dye preparation designated "Queen Ann Liquid Hair Coloring," or any other preparation substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, agreed to cease and desist forthwith from disseminating any advertisements which fail conspicuously to reveal therein the following:

"CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness."

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label."

if and when such label bears the first-described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

3135. **Coal Tar Hair Dye Products—Safety.**—Humm Laboratories, Inc., a corporation, and Humbert Miragia, William H. H. Davis, and Harry White, individuals, the latter two of whom are president and secretary, respectively, of Duart Manufacturing Co., Inc., Ltd., a corporation, engaged in the manufacture of Humm products, coal-tar hair dyes of which there are some 30 different shades, and in the sale thereof, either directly to the consuming public or through Duart Manufacturing Co., Inc., Ltd., as its sole distributing agency, to the trade, 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.

Humm Laboratories, Inc., Duart Manufacturing Co., Inc., Ltd., Humbert Miragia, William H. H. Davis, and Harry White, in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist forthwith from disseminating any advertisements which fail conspicuously to reveal therein the following:

"CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and preliminary test according to accompanying directions should first be made. This produce must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness."

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label."

if and when such label bears the first-described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

3136. **Coal Tar Hair Dye Preparation—Safety.**—Godefroy Manufacturing Co., a corporation, engaged in the business of offering for sale and selling cosmetic products, including a certain coal tar hair dye product designated "Larieuse," in commerce between and among various States of the United States; caused the product "Larieuse" to be placed in packages, each package containing four capsules of hair dye and a 2-ounce bottle of hydrogen peroxide, and in the sale thereof 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.

Godefroy Manufacturing Co., in connection with the dissemination of advertising by the means and in the manner above set out of the said coal tar hair dye preparation designated "Larieuse," or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, agreed forthwith to cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

"CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness."

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label."

if and when such label bears the first-described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

3137. **Coal Tar Hair Dye Preparations—Safety.**—Sales Affiliates, Inc., a corporation, engaged in the business of offering for sale and selling two certain coal tar hair dye products, one designated "Loxol," the other "Inecto" or "Inecto with Lustrium," in commerce, as commerce is defined by the Federal Trade Commission Act, 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.

Sales Affiliates, Inc., in connection with the dissemination of advertising by the means and in the manner above set out of the said coal tar hair dye preparations designated "Loxol," "Inecto," or "Inecto with Lustrium," or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under such names or any other names, agreed forthwith to cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

"CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to

accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness."

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label."

if and when such label bears the first-described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

3138. **Coal Tar Hair Dye Product—Safety.**—Fan Tan Co., Inc., a corporation, engaged in the sale and distribution under the trade name "Black Strand Company" of a coal tar hair dye product designated "Black Strand Hair Coloring" 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.

Fan Tan Co,, Inc., in connection with the sale and distribution of its product in commerce, as defined by said Act, agreed to cease and desist forthwith from disseminating any advertisements which fail conspicuously to reveal therein the following:

"CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness."

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label."

if and when such label bears the first described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

3139. **Coal Tar Hair Dye Preparations—Safety.**—Keystone, The Old Reliable Co., a corporation, engaged in the manufacture of cosmetics, toilet preparations and other merchandise, including two certain coal tar hair dye products of identical composition, one being designated "Hi-Hat" and the other "Four Star," and which latter products it has sold and now sells, generally as the result of mail orders

and under the adopted trade names "Memphis Mail Order House" and "The Hi-Hat Company," 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.

Keystone, The Old Reliable Co., in connection with the dissemination of advertising by the means and in the manner above set out of the said coal tar hair dye preparations designated "Hi-Hat" and "Four Star," or any other preparation of substantially the same composition or possessing substantially the same properties whether sold under said names or by any other name, agreed to cease and desist forthwith from disseminating any advertisements which fail conspicuously to reveal therein the following:

"CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness."

Provided, however, That such advertisement need contain only the statement,

"CAUTION.—Use only as directed on label."

if and when such label bears the first described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

3140. **Coal Tar Hair Dye Product—Safety.**—Jose G. Gonzalez and Mrs. Henry (Felicitas G.) Myers, individuals, engaged in the sale and distribution of a coal tar hair dye product designated "Malintzin" 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.

Jose G. Gonzalez and Mrs. Henry (Felicitas G.) Myers in connection with the sale and distribution of their products in commerce, as defined by said Act, agreed to cease and desist forthwith from disseminating any advertisements which fail conspicuously to reveal therein the following:

"CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness."

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Used only as directed on label."

if and when such label bears the first described caution conspicuously displayed thereon, and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

3146.[1] **Booklet—Qualities, Properties, or Results, and Size.**—Richard U. Bashor, Webster C. Patterson, Richard S. Patterson and Robert T. Patterson, copartners, trading under the firm name "Blackstone-Marshall Publishing Company," engaged in the sale and distribution of a booklet entitled "Your Will and How to Write It" 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.

Richard U. Bashor, Webster C. Patterson, Richard S. Patterson and Robert T. Patterson, in connection with the advertisement, offering for sale, sale or distribution of the booklet entitled "Your Will and How to Write It" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed, and each of them agreed, whether trading under the firm name and style "Blackstone-Marshall Publishing Company" or under any other name, to cease and desist forthwith from:

1. The use of the statement "It is easy to write your own will—a will that is entirely legal, that will be valid and unbreakable in any state," or of any other statement of similar tenor, so as to import or imply that the use of said booklet will afford the purchaser thereof that degree of legal knowledge which is necessary to enable him or her to personally perfect such a legal instrument, as a last will and testament, which would be valid and unbreakable, that is to say, proof against being successfully contested in any State of the United States.

2. The use of the term "Dept. 48" or of any other term or representation which tends or may tend to convey the belief that the business conducted by the said copartners is divided into 48 departments or any number of departments other than actually exist or that it is of a size or magnitude in excess of what is actually the fact. (May 26, 1941.)

[1] Stipulations 3141 to 3145 were not accepted until after May 31, 1941 and are consequently not included at this point but are published in the ensuing volume.

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS[1]

01395.[2] **Medicinal Preparation—Qualities, Properties, or Results.**—The Reese Chemical Co., a corporation, 10617 Frank Ave., Cleveland, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation designated "Thoxine," represented as a remedy for sore throat 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 a remedy or cure for sore throat; breaks up the grip of a sore throat; or is of any value in the treatment of a sore throat except insofar as it may afford temporary relief for certain aches and discomforts associated with a cold.

(*b*) That it soothes congested membranes all the way down, or works *quickly* through the entire system.

(*c*) That it is the ideal preparation for children.

The said The Reese Chemical Co., further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Feb. 18, 1941.)

01454.[2] **Cough Syrup—Qualities, Properties, or Results.**—Foley & Co., a corporation, 945 George St., Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation recommended for the treatment of coughs designated "Foley's Honey & Tar Cough Syrup" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That its therapeutic action is in excess of temporary relief for coughing due to irritations of throat and respiratory tract when these symptoms are due to mild inflammation of the mucous membranes of these structures.

(*b*) That it stimulates the irritated tissues or the bronchial tubes, other than their mucus secreting glands.

(*c*) That it will give continuous comfort to the user, without continuous administration.

[1] The stipulations in question are those of the radio and periodical division with vendor-advertisers. Period covered is that of this volume, namely, December 1, 1940, to May 31, 1941, inclusive. For digests of previous stipulations, see vols. 14 to 31 of Commission's decisions.

[2] Supplemental.

The said Foley & Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 18, 1940.)

01589.[1] **Medicinal Preparation—Safety.**—F. A. Stuart Co., a corporation, Marshall, Mich., vendor-advertiser, was engaged in selling a medicinal preparation alleged to have laxative properties, designated "Stuart's Laxative Compound Tablets" agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That said preparation will in no case have any deleterious effects or is safe to use in all cases, or which fails to reveal, (*a*) that the use of said preparation should be discontinued where a skin rash appears, (*b*) that said preparation should not be used when abdominal pain (stomach-ache, cramps, colic), nausea, vomiting (stomach sickness) or other symptoms of appendicitis are present, and (*c*) that frequent or continued use of said preparation may result in dependence on laxatives, *Provided, however,* That such advertisement need contain only a statement that the preparation should be used only as directed on the label thereof, if and when such label either contains cautioning or warning statements to the same effect as (*a*), (*b*) and (*c*) above, or specifically directs attention to similar warning statements in the accompanying labeling.

The said F. A. Stuart Co. also agreed not to publish or cause to be published any testimonial contrary to the foregoing agreement. (Feb. 14, 1941.)

01665.[1] **Medicinal Preparation—Qualities, Properties, or Results.**—Thomas J. McBride, an individual, trading as The Entromul Co., 1655 Riverside Drive, Los Angeles, Calif., vendor-advertiser, was engaged in selling a medicinal preparation designated "Entromul," alleged to be of value in the treatment of various stomach and intestinal disturbances and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That an over-dosage of said preparation can have no harmful effects.

(*b*) That said preparation will have a beneficial influence on an excess acid condition of the bowels or colon.

(*c*) That said preparation will help maintain the alkaline-acid balance of the body.

(*d*) That said preparation will eliminate the putrefactive germs found in the intestines.

(*e*) That said preparation has any significant value in the treatment of simple mucous colitis.

(*f*) That said preparation is capable of providing a protective dressing to the mucous membrane lining of the stomach.

(*g*) That said preparation is a corrective or is a lasting relieving agent.

[1] Supplemental.

The said Thomas J. McBride further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 2, 1940.)

01798.[1] **Midget Radio Receiving Set—Nature, Qualities, Guaranteed, Size, and Competitive Products.**—W. P. Beshore, C. S. Beshore, D. L. Beshore, and P. S. Beshore, copartners, trading as Midget Radio Co., Fort Kearney State Bank Building, Kearney, Nebr., vendor-advertisers, were engaged in selling a crystal type of midget radio receiving set and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said radio is other than a crystal or crystal type of radio receiving set; or

(*b*) That said radio is "wireless;" or

(*c*) That the dial of said radio is of such luminosity as to be visible in the dark, or will afford perfect tuning; or

(*d*) That said radio is guaranteed without at the same time setting forth all of the essential terms and conditions of such guarantee; or

(*e*) That said radio, as newly designed, weighs but four ounces or is smaller than the ordinary cigarette package, and from making any other claim which misrepresents the actual size of said radio; or

(*f*) That all competitive crystal radio sets with walnut cabinets are of the same quality and value, or that any of such sets retailing for more than 69 cents are necessarily excessively priced, and from making any statements which misrepresent the quality or value of competitive sets or which otherwise falsely disparage such sets.

The said W. P. Beshore, C. S. Beshore, D. L. Beshore, and P. S. Beshore agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 27, 1941.)

01812.[1] **Coal Tar Hair Dye Product—Safety.**—Rap-I-Dol Distributing Corp., a corporation, 151 West Forty-Sixth St., New York, N. Y., vendor-advertiser, was engaged in selling a certain coal tar hair dye product designated Rap-I-Dol Hair Coloring and agreed to cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

"CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness."

[1] Supplemental.

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label,"

if and when such label bears the first described caution conspicuously displayed thereon, and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

02112.[1] **Coal Tar Hair Dye Products—Safety.**—Paragon Distributing Corp., a corporation, also trading as Paragon Laboratories, Inc., Eterne Manufacturing Corp., and Paragon Institute, 11 West Thirty-second St., New York, N. Y., vendor-advertiser, was engaged in selling certain coal tar hair dye products designated Eternol Tint Oil Shampoo and Paragon Hair Coloring and agreed to cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

"CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness."

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label,"

if and when such label bears the first described caution conspicuously displayed thereon, and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

02436.[1] **Gelatine—Scientific Facts, Qualities, Properties, or Results, Manufacturer, Etc.**—Charles B. Knox Gelatine Co., Inc., a corporation, Johnstown, N. Y., vendor-advertiser, was engaged in selling a product designated Knox Gelatine or Knox Sparkling Gelatine and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That scientific laboratory tests have established as a matter of scientific fact that Knox Gelatine increases vim and vitality, increases endurance, builds resistance to fatigue, cuts down and lessens fatigue, increases stamina and "staying power," curbs tiredness, restores vigor or stores energy.

2. That Knox Gelatine or Knox Sparkling Gelatine prevents fatigue; keeps one in top form for working hard and playing hard; enables a person to sleep better or awaken more refreshed; lessens the seriousness of athletic injuries or causes minor athletic injuries to respond quicker to treatment; increases muscular work capacity 50 percent to 100 percent or is of any substantial

[1] Supplemental.

benefit increasing muscular work capacity; doubles energy or increases energy output 37 percent to 240 percent or is of any substantial value in increasing energy output; is an amazing discovery or stores energy.

3. That it is a manufacturer; but nothing in this stipulation shall prevent the Charles B. Knox Gelatine Co., Inc. from representing and stating that Knox Gelatine is manufactured under the laboratory supervision of the Charles B. Knox Gelatine Co., Inc.

Provided, That if, in the event future facts and circumstances should in the judgment of the Commission so warrant, such suitable modification hereof may be made as may be necessary to conform to such facts.

The said Charles B. Knox Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 28, 1941.)

02683. **Cosmetic Preparations—Qualities, Properties, or Results.**—Rose Helen Kingstone, an individual trading as The R. H. Laird Co. and Rose Laird, 785 Fifth Ave., New York, N. Y., vendor-advertiser, was engaged in selling cosmetic preparations designated Rose Laird's Greaseless Lubricant, Protective Face Lotion, Overnight Cream and Liquid Facial Soap and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the products alone or in combination will correct blemishes or other skin ills, conditions or problems.

(*b*) That the products alone or in combination will enable one to acquire or keep a clear skin.

(*c*) That the products alone or in combination will enable persons to free themselves from a problem skin.

(*d*) That by use of the products alone or in combination one will not have bumpy skin, excess oil, eruptions, coarse pores or blackheads, or that such conditions will be cleared by the separate or combined use of her products.

The said Rose Helen Kingstone further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 2, 1940.)

02684. **Filter for Lubricating Oil of Internal Combustion Engines—Qualities, Properties, or Results.**—Fram Corporation, a corporation, Rumford Post Office, East Providence, R. I., vendor-advertiser, was engaged in selling a certain filter for the lubricating oil of internal combustion engines, designated Fram Oil and Motor Cleaner 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 the Fram Oil and Motor Cleaner motorists are freed from all oil and mechanical motor trouble.

(*b*) That the use of the Fram Oil and Motor Cleaner will double the possible length of service of an internal combustion engine or that the possible length of

service of such engine can be extended beyond any period not in accord with the facts; and

(c) That installation of a Fram Oil and Motor Cleaner will effect savings sufficient to equal its cost in instances where a motor is consuming excessive oil because of a need for mechanical repairs.

The said Fram Corporation agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 3, 1940.)

02685. **Drug Product—Qualities and Laboratory.**—Milton Boyle, Jr., and H. Sibner, copartners operating under the firm name of Charmette Cosmetic Laboratory, Charmette Laboratory, and Charmette Laboratories, 730 Fifth Ave., New York, N. Y., vendor-advertisers, were engaged in selling a drug product designated Rx28 and agreed, in connection with dissemination of future advertising, to cease and desist from representing directly or by implication:

That Rx28 is a remedy for acne, pimples, blackheads or other skin blemishes, or that relief of any kind is assured or sure.

Milton Boyle, Jr., and H. Sibner further agreed to cease and desist from the use of the words "Laboratory" and "Laboratories" in their trade name, or from otherwise representing that they own, operate or control a laboratory.

The said Milton Boyle, Jr. and H. Sibner further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 6, 1940.)

02686. **Medicinal Preparation—Qualities.**—G. W. Bodine, an individual trading as Field Herbs, 10353 South Peoria St., Chicago, Ill., was engaged in selling a medicinal preparation designated Herbs and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That his product is of any value whatsoever in the treatment of coughs, colds, asthma, nervousness, diabetes, or heart trouble, or that his product is a competent treatment or effective remedy for affections of the kidneys, bladder or intestines.

The said G. W. Bodine further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 6, 1940.)

02687. **Medicinal preparation—Approval or Indorsement and Qualities, Properties, or Results.**—Lester Meyers, an individual, 112 East Seventeenth St., New York, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for a preparation designated "Activanad" on behalf of Charles J. Ahsbahs, trading as Neo-Products Co. of America, in the city of New York, State of New York and agreed, in connection with the dissem-

ination 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. (Dec. 6, 1940.)

02688. **Deodorant—Qualities, Properties, or Results, and Employment.**—P. Edwards, an individual operating under the trade name of The Nix Cosmetics Co., 1668 Monroe Ave., Memphis, Tenn., vendor-advertiser, was engaged in selling a cosmetic preparation designated "Nix Deodorant Cream," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the application of Nix stops the flow of perspiration.

(*b*) That an application of Nix stops perspiration odor for days.

(*c*) That Nix affects perspiration or perspiration odors in a new way, or a way different from that of other preparations.

(*d*) That Nix neutralizes or has any other substantial effect upon perspiration acids.

The said P. Edwards further agreed to cease and desist from representing, by the use of a misleading headline or otherwise, that any girls are "wanted," or from otherwise representing, importing, or implying that he has any employment to offer. (Dec. 9, 1940.)

02689. **Electric Fence Controllers—Approval or Indorsement, Value, Safety, Qualities, Etc.**—Sears, Roebuck & Co., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling electric fence controllers designated "Sears Thrifty, Defiance, 4 Star, and Cross Country" electric fence controllers and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That any electric fence controller offered for sale or sold by it has been approved by the Underwriters' Laboratories or any other laboratory, commission, or authority when such is not the fact; or

(*b*) That any controller offered for sale or sold by it has any value in excess of the current market price at which such controller is regularly sold, or that it has a value in excess of the recent market price at which such controller was regularly sold; or

(*c*) That an electric fence served by any of the controllers offered for sale or sold by it is "absolutely" safe; or

(*d*) That purchasers can save more than half the cost of their electric fence controllers, or any other sum in excess of the average difference in the current market prices of controllers of equal quality, efficiency, and durability; or

(*e*) That one or two wires will stop both large and small animals, which include sheep and goats; or

(*f*) That an electric wire fence will assure protection of fields or crops.

The said Sears, Roebuck & Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 9, 1940.)

02690. **Dog Food—Comparative Merits, Laboratory, and Qualities, Properties, or Results.**—The Charles H. Lilly Co., a corporation, Seattle, Wash., vendor-advertiser, was engaged in selling a dog food designated "Lilly's Dog Food" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That its dog food is better than uncooked dog food.

(*b*) That it owns, operates, or controls a laboratory.

(*c*) That its product prevents any skin disorder, aids in assimilating mineral matter, stimulates the glands, tones the digestive tract, or aids the lustre or sleekness of the hair coat.

The said The Charles H. Lilly Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 9, 1940.)

02691. **Perfume—Source or Origin.**—W. F. Hagel, an individual doing business as such and under the trade name Rexbell, Huntington Station, Post Office Box 124, New York, N. Y., vendor-advertiser, was engaged in selling a preparation designated "French Love Drops" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

By the use of the word "French" as a part of the name of said product that said product was manufactured or compounded in France, or by the use of the word "Exotic" as descriptive of said product that said product was introduced from a foreign country.

The said W. F. Hagel further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 10, 1940.)

02692. **Rat Killing Preparations—Qualities, Properties, or Results, and Comparative Merits.**—Cenol Co., Inc., a corporation, 4250–4256 North Crawford Ave., Chicago, Ill., vendor-advertiser, was engaged in selling two rat-killing preparations designated "Cenol Squill Powder" and "Cenol Rat Destroyer" and agreed, in connection with the

dissemination of future advertising, to cease and desist from representing directly or by implication:

Cenol Squill Powder:

(*a*) That Cenol Squill Powder will kill any species of mice except that species known as house mice.

(*b*) That it is the leading raticide in the United States, and that it is superior to or more effective than similar preparations containing the same amount and toxic quality of red squill powder.

Cenol Rat Destroyer:

(*c*) That Cenol Rat Destroyer will destroy any species of mice except that species designated as house mice.

(*d*) That the effect of Barium Carbonate content contained in Cenol Rat Destroyer will drive poisoned rats out of doors to die in the open.

The said Cenol Co., Inc., agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Dec. 10, 1940.)

02693. **Hair Product—Composition and Qualities, Properties, or Results.**—Newmark's Advertising Agency, Inc., a corporation, 217 Seventh Ave., New York, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for a cosmetic product designated "Lucone Herb Tonic" on behalf of Lucone, Inc., 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 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 end falling or thinning hair or dandruff. (Dec. 10, 1940.)

02694. **Rat-killing Preparation—Tests, Guarantees, Qualities, Etc.**—Chas. Denny, an individual trading as Sur-Rid Products Co., 455 Paul Brown Building, St. Louis, Mo., vendor-advertiser, was engaged in selling a rat-killing preparation designed "Sur-Rid Rat Killer" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That he tests every lot of the product.

(*b*) That he guarantees the killing power of the product.

The said Chas. Denny further agreed to cease and desist from using the term "Sur-Rid" or any similar term or terms, word or

words, as a part of the brand name of the product or from otherwise representing or implying that it is sure in action or that its use will rid premises of rats.

The said Chas. Denny agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 17, 1940.)

02695. **Drug Product—Qualities, Properties, or Results, and Comparative Merits.**—D. R. Sterett and Margaret H. Sterett, copartners operating under the firm name of Na-Pa Chemical Co., 1108 South Broadway, Leavenworth, Kans., vendor-advertisers, were engaged in selling a drug product designated "Na-Pa Balm" 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 competent treatment or an effective remedy for colds, or that it will break colds up, or that it provides protection or insurance against colds, or that it will aid in their prevention or do more than afford temporary relief from the symptoms and discomforts associated therewith.

(*b*) That the product is a competent treatment or an effective remedy for, or that it will provide protection or insurance against or aid in the prevention of muscular aches and minor ailments, or do more than afford temporary relief from the pain associated therewith.

(*c*) That the product penetrates.

(*d*) That the product acts as a barrier to keep out cold germs.

(*e*) That the product is a competent treatment or an effective remedy for throat infections or sinus irritations or that it will aid in preventing those conditions.

The said D. R. Sterett and Margaret H. Sterett further agreed that in making comparisons of the absorbing power of goose grease or any other ingredient contained in the product, they will state the ingredients with which comparison is made and that no such comparison will be made unless the statements are actually a fact.

The said D. R. Sterett and Margaret H. Sterett further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 13, 1940.)

02696. **Deodorant—Qualities, Properties, or Results, and Employment.**—Cole & Co., a corporation, Sterick Building, Memphis, Tenn., was engaged in the business of conducting an advertising agency which disseminated advertisements for a cosmetic preparation designated "Nix Deodorant Cream" on behalf of The Nix Cosmetics Co., Memphis, Tenn., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the application of Nix stops the flow of perspiration.

(b) That an application of Nix stops perspiration odor for days.

(*c*) That Nix affects perspiration or perspiration odors in a new way, or a way different from that of other preparations.

(*d*) That Nix neutralizes or has any other substantial effect upon perspiration acids.

The said Cole & Co. further agreed to cease and desist from representing, by the use of a misleading headline or otherwise, that any girls are "wanted," or from otherwise representing, importing, or implying that The Nix Cosmetics Co. has any employment to offer. (Dec. 17, 1940.)

02697. **Matrimonial Agency or Correspondence Club—Business Status, Guarantees, Unique Nature, Etc.**—Violet F. Bezirjian, an individual trading as The Quill Club, 3503 South Broadway, Englewood, Colo., vendor-advertiser, was engaged in selling lists of names purporting to be names of members of The Quill Club, for the alleged purpose of promoting social intercourse, designated "The Quill Club," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That The Quill Club is a permanently established organization or an organization of any kind.

(*b*) That she guarantees or assures the introduction of or application to congenial people of the ages specified or issues guarantees.

(*c*) That her statements relating to the financial or other standing, education, character, age, occupation, or profession of those whose names appear on such lists are other than the mere statements of those persons themselves, in the absence of some reasonable investigation into the truth or falsity of such statements.

(*d*) That her method is exclusive, unique, or different from the methods of others engaged in competition with her in promoting social intercourse.

The said Violet F. Bezirjian agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing statement. (Dec. 19, 1940.)

02698. **Medicinal Preparation—Qualities, Comparative Merits, and Safety.**—Kohler Manufacturing Co., a corporation, 15 East Lombard St., Baltimore, Md., vendor-advertiser, was engaged in selling a medicinal preparation designated "Kohler Antidote," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the use of this product will free one of pain, or will take away pain, or from otherwise representing that it affords complete relief from pain.

(*b*) That this product will relieve pain double quick, lightning fast, or quicker than other similar preparations.

(*c*) That this product is absolutely safe, or has no bad after-effects, or that users need have no fear about taking it, or that users can place absolute faith in the product.

The said Kohler Manufacturing Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 26, 1940.)

02699. **Coal—Qualities, Properties, or Results, Etc.**—Bair-Collins Co., a corporation, Roundup, Mont., vendor-advertiser, was engaged in selling coal designated "Keene Coal" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That one-eighth inch of soot reduces coal efficiency 45%.
2. That the user of Keene Coal will get all of its best value.
3. That Keene Coal does not produce injurious gases.
4. That Keene Coal is free from sulphur.
5. That Keene Coal does not contain destroying sulphuric acid.
6. That Keene Coal is sootless, dustless or smokeless.
7. That Keene Coal produces 96.45% heat.
8. That after burning Keene coal a stove is clean inside or free from soot.

The said Bair-Collins Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 27, 1940.)

02700. **Lists of Names for Promoting Social Intercourse—Results, Testimonials, Limited Offer, Nature, Fees, Etc.**—Nancy Jordan and Samuel I. Turoff, copartners, operating under the firm names of Nancy Jordan Club and American Exchange, General Post Office Box 376, New York, N. Y., vendor-advertisers, were engaged in selling lists of names for the alleged purpose of promoting social intercourse and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That satisfactory results are sure.
(*b*) That testimonials are sworn to when such is not the fact.
(*c*) That any offer is limited in number or time when such is not a fact.
(*d*) That thousands everywhere have found happiness through their method.
(*e*) That any fee is a complete fee when any charge is thereafter made in connection with the sale of the lists.

The said Nancy Jordan and Samuel I. Turoff further agreed to cease and desist from making claims with reference to the financial standing, character, education, or social position of any person listed with them which are not in accordance with the known facts, and in direct connection therewith the source of their information is stated.

The said Nancy Jordan and Samuel I. Turoff further agreed to advise a prospective purchaser in contact literature that the transmittal of only one list of names is included in the membership fee and that a charge is made for all lists which may be transmitted thereafter.

The said Nancy Jordan and Samuel I. Turoff further agreed to cease and desist from misdescribing applicants or filled-in application blanks.

The said Nancy Jordan and Samuel I. Turoff further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 27, 1940.)

02701. **Hair Preparation—Qualities, Properties, or Results, History, Etc.**—The Ambofa Products Co., a corporation, Hastings, Nebr., vendor-advertiser, was engaged in selling a preparation recommended for such conditions as dandruff, itching scalp and falling hair, said preparation being designated "Ambofa Hair Tonic" and "Ambofa Cream for Hair" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That said preparation will make hair healthy, or will impart to hair its natural shade, or will restore to hair its natural beauty, color, or luster, or will bring instant results, or will stop, eradicate, or get at the cause of hair or scalp troubles or scalp infections, or is of value for all scalp or hair troubles, or is of value for any scalp or hair trouble unless such scalp or hair trouble is such that it may be benefited by the application of a mild antiseptic rubefacient and emollient, or will give life to the hair, or will aid in causing hair to become luxuriant, or will kill "dandruff germs," or will rid the scalp of or stop dandruff, or is a competent and effective treatment for eczema of the scalp, or will serve to prevent hair from falling out or fading, or will stop an itching scalp condition, or will do more than afford temporary relief for itching scalp, or will relieve itching scalp within any definite period of time, or is a "specific" treatment, or is a new discovery, or is the result of years of research, or that any of its ingredients will penetrate the scalp, or, by the use of the name "Ambofa Cream for Hair" or in any other manner, that said preparation is in the form of a cream.

The said Ambofa Products Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 30, 1940.)

02702. **Medicinal Preparations—Qualities, Properties, or Results, Etc.**—Lydia E. Pinkham Medicine Co., a corporation, Lynn, Mass., vendor-advertiser, was engaged in selling medicinal preparations, designated "Lydia E. Pinkham's Vegetable Compound" and "Lydia E. Pinkham's Vegetable Compound Tablets" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That either product is of benefit to, or an effective remedy for female functional disorders, menstrual aberrations, or menopause, in excess of relief of symptoms associated with and caused by menstrual aberrations and symptoms associated with and caused by menopause, and as a uterine sedative.

(*b*) That either product is of benefit for any symptoms, ailments, or conditions that are due to organic disease.

(*c*) That either product will overcome melancholia, act as an aphrodisiac, or enhance the attractiveness of the user.

(*d*) That either product is a general system tonic.

(*e*) That either product will afford permanent relief from nervousness.

(*f*) That the products are fully identical in purpose and effect.

The said Lydia E. Pinkham Medicine Co. further agreed that whenever reference is made to the brand name of the tablets in advertising, it will state in direct connection therewith, in appropriate terms, that the product contains added iron.

The said Lydia E. Pinkham Medicine Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 31, 1940.)

02703. **Evaporated Milk—Producer.**—Carnation Co., a corporation, 700 Milwaukee Gas Light Building, Milwaukee, Wis., vendor-advertiser, was engaged in selling a food product designated "Carnation Irradiated Evaporated Milk" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

By use of such expressions as "Producers of Irradiated Carnation Evaporated Milk" or otherwise that it produces the milk from which its product is processed.

The said Carnation Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 2, 1941.)

02704. **Cosmetic—Qualities, Properties, or Results, and Special Offers.**—Julius Skinder, an individual operating under the trade names of Valortone Herb Co., and Lavelle Sales Co., Post Office Box 305, Clinton, Ind., vendor-advertiser, was engaged in selling a cosmetic designated "Valortone" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Valortone restores natural lustre and loveliness to hair.

(*b*) That Valortone is entirely herbal in composition, or is an herbal hair treatment.

(*c*) That Valortone achieves results not obtainable by the use of any other preparation.

(*d*) That this preparation is a color restorer, or will enable users to regain natural color or health of hair.

(*e*) That Valortone will stop or banish dandruff or falling hair, or, by any other terminology, that it is a competent treatment or an effective remedy for either of these conditions.

(*f*) That any offer is "special" unless it is for an expressly limited period of time, after which acceptance of such offers are refused.

The said Julius Skinder further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 3, 1941.)

02705. **Hosiery—Composition and Price.**—J. B. Buller, an individual doing business under the trade name of St. Joseph Sales Co., 212 Schneider Building, St. Joseph, Mo., vendor-advertiser, was engaged in selling hosiery and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) Representing, describing, or designating his hosiery to be knitted from pure silk fiber when certain portions thereof are knitted from fibers other than silk.

(*b*) Representing, describing, or designating his hosiery to be crepe silk when the twist of the silk fiber does not conform to the standard twist for crepe silk.

(*c*) Representing, describing, or designating the fiber used in his hosiery to be lisle when the fiber so designated, described, or represented does not conform to the standards of lisle fiber.

(*d*) Representing, that the regular price of his hosiery is any amount greater than the price at which such hosiery is regularly sold.

The said J. B. Butler agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 3, 1941.)

02706. **Lubricating Oil—Qualities, Properties, or Results.**—Union Oil Co. of California, a corporation, Union Oil Building, Los Angeles, Calif., vendor-advertiser, was engaged in selling a lubricating oil designated "Triton Motor Oil" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That carbon ping will be removed within two to three thousand, or within any other specified number of miles, by the use of Triton Motor Oil.

(*b*) That use of Triton Motor Oil will decrease oil consumption by 42% or by any other stated amount or percentage.

(*c*) That Triton Motor Oil will eliminate or benefit to any substantial extent cases of sticking valves or rings in automobiles.

The said Union Oil Co. of California agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 6, 1941.)

02707. **Medicinal Preparation—Comparative Merits, Qualities, Properties, or Results, and Special Offers.**—Magay Corporation, a corporation, 41 East Fifty-seventh St., New York City, vendor-advertiser, was engaged in selling a medicinal product designated "Q-Loid" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication.

(*a*) That Q-Loid is similar to or will accomplish results similar to those obtained by the treatments administered to patients at the Veterans Administration Hospital at Bronx, New York, or to injections of colloidal sulphur.

(*b*) That Q-Loid is a competent treatment or an effective remedy for arthritis; that it has any therapeutic value in the treatment of this condition in excess of the possibility of its affording temporary symptomatic relief in some forms of arthritis when a sulphur deficiency is present.

(*c*) That the sale of Q-Loid at any specified price represents a special offer unless and until such offer is in fact limited to purchasers under certain specified conditions.

The said Magay Corporation further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 6, 1941.)

02708. **Lipstick—Qualities, Properties, or Results, Etc.**—Warwick & Legler, Inc., a corporation, 230 Park Ave., New York, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for cosmetic products designated "Tangee Lipstick" and "Tangee Theatrical Lipstick" on behalf of The George W. Luft Co., Long Island City, N. Y., 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. (Jan. 7, 1941.)

02709. **Medicinal Preparation—Qualities, Properties, or Results, Unique, History, and Safety.**—Albert Laboratories, Inc., a corporation, 2535 North California Ave., Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation in liquid form containing potassium iodide, and designated "Respirine," which preparation the said Albert Laboratories, Inc., recommended for use in connection with such conditions as asthma, bronchitis, and hay fever and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication

(*a*) That such preparation is a competent treatment or an effective remedy for asthma, bronchial coughs, bronchitis, or whooping cough, or that it will do any more with respect to these conditions than afford some temporary relief from the accompanying symptoms.

(*b*) That such preparation relieves symptoms accompanying hay fever or that it constitutes a treatment for hoarseness.

(*c*) That such preparation promotes healing; that it increases the flow of mucus from the nasal cavity, or that it provides instant relief.

(*d*) That such preparation is unique or distinctly new, or that it represents a discovery.

(*e*) That such preparation is safe.

The said Albert Laboratories, Inc., avers, however, relative to paragraph (*e*) above that its product Respirine does not now contain potassium iodide, and that such ingredient has not been used in the composition of said product since February 1, 1940; further, that when Respirine contained potassium iodide it was sold with a proper warning on the label concerning safety.

The said Albert Laboratories, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 8, 1941.)

02710. **Breath Lozenge—Qualities, Properties, or Results.**—Chasers, Inc., a corporation, 155 East Forty-fourth St., New York, N. Y., vendor-advertiser, was engaged in selling a breath lozenge designated "Chasers" 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 the one effective tablet.

(*b*) That the product will lastingly kill or permanently overcome bad breath due to tobacco, onions, alcohol, or garlic, or overcome bad breath when due to organic derangements, infections, decayed teeth, or diseased conditions; or that it will do more than temporarily dispel such bad breath odors.

(*c*) That the product will kill or effectively overcome or mask all types of unpleasant breath.

The said Chasers, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 9, 1941.)

02711. **Nose Drops—New, Rare, and Safety.**—A. Marks, an individual doing business as The Sumlar Co., 1 Sickles St., New York, N. Y. vendor-advertiser, was engaged in selling a certain nose drop medicinal preparation designated "Kloronol" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That said product is "new" or "rare."

A. Marks further agreed that with respect to advertising for such product disseminated by the means and in the manner above set out, he will forthwith cease and desist from disseminating any advertisement representing directly or by implication that its continuous use is safe or that it may be continuously used without harm in certain pathological conditions such as sinusitis, or which advertisement fails to reveal that its continued or frequent use may cause nervousness, restlessness, or sleeplessness, and also fails to reveal that individuals suffering from high blood pressure, heart disease, diabetes, thyroid trouble, should not use this preparation except on competent advice, *Provided, however*, that such advertisement need contain only a statement that the preparation should be used only

as directed on the label thereof, if and when such label either contains a caution or warning to the same effect or specifically directs attention to a similar caution or warning statement in the accompanying labeling.

Said A. Marks further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Jan. 10, 1941.)

02712. **Mink Breeding Stock—Advantages, Opportunities, and Earnings or Profits.**—Alvin L. Keeny, an individual, Route No. 1, New Freedom, Pa., vendor-advertiser, was engaged in selling mink breeding stock and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That he personally has any substantial resources to assure the sale, at a profit, of mink raised from breeding stock sold by him.

(*b*) That he has obtained or is able to obtain any specific amount for a mink pelt in excess of that amount which he has actually obtained or that mink pelts are worth any specified amount in excess of such amount obtained.

(*c*) By the use of such words as "up to," "as high as," or any other words or terms of like import, that persons purchasing mink from him 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 from the sale of mink or mink pelts within like periods of time of a substantial number of those persons who have purchased mink from him.

The said Alvin L. Keeny agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 10, 1941.)

02713. **Remedy for Athlete's Foot and Other Foot Troubles—Qualities, Properties, or Results, History, and Laboratories.**—A. Greenberg, Sol Bassan, and H. Greenberg, copartners, doing business under the trade names Foot-Pep Laboratories, and Foot-Pep Sales, 930 West Roosevelt Rd., Chicago, Ill., vendor-advertisers, were engaged in selling a preparation designated "Foot-Pep," represented as a remedy for athlete's foot and other foot troubles and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) Foot-Pep is a competent remedy or effective treatment for athlete's foot or has any therapeutic value in the treatment thereof in excess of affording temporary symptomatic relief.

(*b*) Foot-Pep stops acidity, penetrates into the pores of the skin, stimulates foot circulation, peps up normal feet, or acts like magic.

(*c*) Foot-Pep soothes corns, bunions, or callouses.

(*d*) Foot-Pep is new, revolutionary, scientific, or a discovery.

(*e*) Foot-Pep has healing qualities.

(*f*) Foot-Pep relieves swelling, aching, or perspiring feet, aids tender feet or relieves muscular soreness.

(*g*) Foot-Pep restores or helps to restore vigor or health to the feet or body or insures lasting comfort.

The said A. Greenberg, Sol Bassan, and H. Greenberg further agreed to forthwith cease and desist from representing by the use of the word "Laboratories" or any abbreviation thereof, as a part of their trade name or by any other means, that they maintain, operate, or control a laboratory.

The said A. Greenberg, Sol Bassan, and H. Greenberg further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 13, 1941.)

02714. **Rat-Killing Preparation—Comparative Merits and Government Indorsement or Approval.**—Meyer Brothers Drug Co., a corporation, 217 South Fourth St., St. Louis, Mo., vendor-advertiser, was engaged in selling a rat-killing preparation designated "Ratskill" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That "Ratskill" is the most effective exterminator to use against rats.

(*b*) That the Department of Agriculture said that red squill is the most successful of all rat poisons.

The said Meyer Brothers Drug Co. agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Jan. 13, 1941.)

02715. **Medicinal Preparations—Qualities, Properties, or Results, and Nature.**—J. Goodman, Inc., a corporation, 1578 First Ave., New York, N. Y., vendor-advertiser, was engaged in selling certain medicinal preparations designated "Silver Moon Brand Nerve Sedative Tea," "Goodman's Forest Herb Tea Mixture," and "Pinosan Pine Bath Salts," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication in advertisements disseminated in the English, German, or any other language:

(*a*) That Goodman's Forest Herb Tea Mixture is an expectorant or that it prevents the formation of, or helps to expectorate, phlegm.

(*b*) That Goodman's Forest Herb Tea Mixture is a competent treatment for colds, coughs, or hoarseness.

(*c*) That Pinosan Pine Bath Salts stimulate the secretion of perspiration, or open the pores or increase secretion of waste matter.

(*d*) That the product known heretofore as Silver Moon Brand Nerve Sedative Tea is a sedative, or is a competent treatment for nervousness or sleeplessness, or will quiet the nerves.

J. Goodman, Inc., further agreed to cease and desist from the use, in the brand name of the product heretofore designated Silver Moon Brand Nerve Sedative Tea, or any other product of the same or sub-

stantially the same composition, of the words "nerve" and "sedative" or any other terminology representing, importing or implying that such product has any sedative effect upon the nervous system.

The said J. Goodman, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 17, 1941.)

02716. **Cosmetics—Qualities, Properties, or Results.**—AW—Advertising, Inc., a corporation, 420 Lexington Ave., New York City, was engaged in the business of conducting an advertising agency which disseminated advertisements for cosmetics designated "Rose Laird's Greaseless Lubricant," "Protective Face Lotion," "Overnight Cream," and "Liquid Facial Soap" on behalf of Rose Helen Kingstone, an individual trading as The R. H. Laird Co. and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the products alone or in combination will correct blemishes or other skin ills, conditions, or problems.

(*b*) That the products alone or in combination will enable one to acquire or keep a clear skin.

(*c*) That the products alone or in combination will enable persons to free themselves from a problem skin.

(*d*) That by use of the products alone or in combination one will not have bumpy skin, excess oil, eruptions, coarse pores, or blackheads, or that such conditions will be cleared by the separate or combined use of her products. (Jan. 17, 1941.)

02717. **Hair and Scalp Preparation—Qualities, Properties, or Results, Tested, Approved, and Corporation.**—Ar. Winarick, Inc., a corporation operating under the trade name of The Herpicide Co., 805 East One Hundred and Fortieth St., New York, N. Y., vendor-advertiser, was engaged in selling a drug product designated "Newbro's Herpicide" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Newbro's Herpicide will prevent the loss of hair or baldness or will counteract conditions causing hair loss or will save the hair or will keep the user young-looking.

(*b*) That the use of Newbro's Herpicide assures beautiful or healthy hair or that it will keep the hair alive or will protect the health of the hair or insure a healthy scalp.

(*c*) That Newbro's Herpicide is a cure for or will remedy dandruff or that it is a positive dandruff germicide or that it is a competent treatment for dandruff unless limited to a temporary removal of dandruff scales and the mitigation of the symptoms of itching.

(*d*) That Newbro's Herpicide has been tested and approved.

(*e*) That this preparation will penetrate the pores or stir up sluggish scalp circulation or will cause the sebaceous glands to function properly.

(*f*) That the use of Newbro's Herpicide aids in overcoming faulty scalp con-

ditions unless clearly and specifically limited to those particular conditions in which it would be an effective treatment.

(*g*) That this product is recognized as the standard hair tonic of the world.

Ar. Winarick, Inc., further agreed to cease and desist from the use of the term "Inc." in referring to or as descriptive of The Herpicide Co., or from otherwise representing that The Herpicide Co., is itself a corporation.

The said Ar. Winarick, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 17, 1941.)

02718. **Medicinal Preparation—Qualities, Properties, or Results, Comparative Merits, and Safety.**—Courtland D. Ferguson, Inc., a corporation, National Press Building, Washington, D. C., was engaged in the business of conducting an advertising agency which disseminated advertisements for a medicinal preparation designated "Kohler Antidote" on behalf of Kohler Manufacturing Co., Baltimore, Md., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the use of this product will free one of pain, or will take away pain, or from otherwise representing that it affords complete relief from pain.

(*b*) That this product will relieve pain double quick, lightning fast, or quicker than other similar preparations.

(*c*) That this product is absolutely safe, or has no bad after-effects, or that users need have no fear about taking it, or that users can place absolute faith in the product. (Jan. 17, 1941.)

02719. **Medicinal Preparations and Food Supplements—Composition, Qualities, Properties, or Results, Etc.**—Vegetrates, Inc., a corporation, 170 South La Brea, Los Angeles, Calif., vendor-advertiser, was engaged in selling certain products under the general name of Vegetrates, specifically designated: Vege-broth; Vegetrate BF-1; Vegetrate Formula No. CC-413; Vegetrate "Caroa" Fortified With Vitamin "A"; Wheat Germ Oil Perles, Standard Potency Vitamin "E"; Vege-Weat Tablets, Gar-Par Tablets; Decalsus Tablets; Vegetrate Formula NB-43; Vegetrate Formula 47; Vegetrate Formula U-418; Vegetrate Formula OW-415; Vegetrate Formula NA-41; Vegetrate Formula G4-12; Syl-wey; and Vegetrate NNS-42 and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That modern conditions cannot assure the full measure of life sustaining organic minerals in the food one buys or cooks today.

(*b*) That the Vegetrate formulae are concentrated or contain all the concentrated goodness of nature's own vegetables, or of vegetables grown in a specially mineralized soil; or that they give added protection, or are of material benefit to those whose resistance is low.

(*c*) That Vege-broth: Contains all vital vegetable elements; promotes health; gives new strength or energy; is a tonic drink; puts vim or vigor into tired nerves; provides a way to get pick-up when tired nerves or muscles lag; peps up jaded appetities; is alkalizing; or that its chlorophyll content furnishes material for hemoglobin building; retains the prolific chlorophyll content, or its vitamin potencies; builds up one's alkaline reserve against fatigue, mental or physical; replenishes the mineral salts used up, or enables one to get pep in the natural way; contains organic minerals in a more available form, or in a form more readily or easily assimilated, or that such minerals supplement the mineral-deficient diet; offers a way to supply essential alkaline-forming minerals, or offsets the acid forming properties of the unbalanced diet.

(*d*) That Vegetrate BF-1: Supplies ample organic or alkalizing minerals; helps to neutralize excess acids; supplies to the body minerals or vitamins or whichever it may require; reconstructs the body; gives calcium to the teeth or bones, iron to the red blood cells or phosphorus to the nerves; enables weak, dehabilitated pain-wracked bodies to get the proper chemical balance, or puts nature in a position to build anew for a stronger body, better health or energy; provides vigor; releases the vital mineral colloids to the stomach juices; facilitates the process of digestion; makes all vital energy bearing elements of vegetables available to the blood stream or that it builds up resistance reserve; is a nutritional supplement; gives to the blood, through the digestive tract, or at all, a full ration of balanced minerals or any specified portion of the minerals of which the body is made; gives the protective organic minerals essential to health, or vitamins essential for health or well being, or that any of the vitamins are naturally inherent in said minerals; enables a tired, listless, half alive existence to take on a new meaning or causes one to feel better or act better; is beneficial to one who is upset, weak or nervous, or that it would effect the functioning of the liver, kidneys, bowls or stomach; affords relief from pimply, clouded complexion, dull, listless eyes or spots before the eyes, faded bloodless lips, general tired feeling, coated tongue, headache, soft pudgy flesh, heartburn, gas on stomach, restless sleep, foul breath, nervous indigestion or lack of appetite; is amazingly effective; without an equal; a tested formula of vegetable or herbal growths; or the essential of life-sustaining elements of nature's own vegetables or herbs.

(*e*) That Vegetrate Formula No. CC-413: Is a competent treatment or effective remedy for headache, or a dietary adjuvant in the correction of constipation; reduces the colonic bacilli count, allays inflammation of the mucosa, furnishes lubrication, stimulates the action of the kidneys; is a special dietary supplement with laxative action.

(*f*) That Vegetrate "Caroa" Fortified with Vitamin "A" is a protection against infection.

(*g*) That Wheat Germ Oil Perles, Standard Potency Vitamin "E": Is essential during pregnancy; gives aid in the formation of the placenta; provides for the supply of the lutel harmone; is of standard Vitamin E potency or of the highest available potency.

(*h*) That Vege-Weat Tablets: Is a competent treatment or effective remedy for constipation, colitis, indigestion, abnormal blood pressure or is what the whole body needs; is a turn back to the right path; is a source of energy, new stamina, new life-sustaining elements, or that it contains an effective percentage of vitamin B, or a balanced ratio of proteins or minerals; gives a pronounced increase in available building material for hemoglobin; means more blood cells or more resistance to disease; is strengthening or stimulating, provides blood-building iron, aids digestion, tones up the intestinal tract; is an effective remedy

or competent treatment for restlessness, broken sleep, poor, spotted, or pimply complexion, nerves that are jumpy or on edge, or for one who is always tired, run-down, pale, weak, or anemic looking; is ideal as a nutritional supplement for the anemic, or underweight, or is beneficial in cases of loss of appetite, low vitality, or convalescence.

(*i*) That Garlic and Parsley have any value in the treatment of functional hypertension associated with high blood pressure in excess of affording temporary relief to the symptoms thereof; or that the garlic ingredient in said tablets is of any material value in the correction or elimination of parasitic activities in the intestines.

(*j*) That Decalsus Tablets constitute a dietary adjuvant, supply an added intake of phosphorus, or facilitate the excretion of calcium in the form of calcium phosphate.

(*k*) That Vegetrate Formula NB-43 is a competent treatment or effective remedy for a sallow complexion, biliousness, or pimples.

(*l*) That Vegetrate Formula 47 is a source of supplementary nutrition in the dietary care of intestinal fermentation or similar metabolic disturbances, or that it is a competent treatment or effective remedy for such disorders.

(*m*) That Vegetrate Formula U-418: Is a dietary adjuvant in providing, or that it does provide, gastric rest; supplies the body with organic vegetable mucin or protects the stomach lining from gastric irritation.

(*n*) That Vegetrate Formula OW-415: Provides the system with organic minerals in balanced rations; is a food adjuvant or that it produces a reduction in weight.

(*o*) That Vegetrate Formula NA-41 helps to counteract the effect of faulty metabolism, produces added flesh to the skinny or undernourished, assists elimination, corrects constipation, or, when added to the daily diet, helps to supply missing mineral colloids in a concentrated, available form.

(*p*) That Syl-way: Is a competent treatment or effective remedy for colitis or spastic constipation; will allay inflammation or putrefaction without irritation, or at all.

(*q*) That Vegetrate NNS-42 is a sedative or that it has any therapeutic action.

(*r*) That Vegetrate Formula G-412 provides an adequate source of calcium or phosphorus.

The said Vegetrates, Inc., further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Jan. 21, 1941.)

02720. **Dehydrated Vegetable Products—Manufacturer, Qualities, Properties, or Results, Nature, Special Offers, Safety, Etc.**—Patten Concentrates, Inc., a corporation, 228 Front St., Burbank, Calif., vendor-advertiser, was engaged in selling certain dehydrated vegetable products some of which are fortified with vitamins and others with drug laxatives, generally designated Patten Concentrates, and specifically designated Patten's Tablets enriched with Vitamins A-B-D-G, Parsley-Garlic Tablets, Ultra-Eleven Vegetable Tablets, Vegetable Broth Concentrated, B-Trate, Soy-Lax and Patten's Kelp Tablets and agreed, in connection with the dissemination of future

advertising, to cease and desist from representing directly or by implication:

(*a*) That it manufactures or produces the products which it sells.

(*b*) That its products are chemically or biologically analyzed and assayed at regular or frequent intervals.

(*c*) That its products are "correctives."

(*d*) That its products have any special health-giving or remedial value.

(*e*) That vegetables and fruits are the richest or most reliable sources of vitamins or minerals.

(*f*) That the average American diet is deficient in minerals.

(*g*) That all persons need to add any of its food products to their diet.

(*h*) That its products supply an adequate amount of minerals to the diet.

(*i*) That malnutrition is the cause of 80 per cent or any other incorrect number or percentage of deaths.

(*j*) That most people do not secure the vitamins in their diet.

(*k*) That any special offer for a specified or limited period of time will be terminated at a specified date or that there is a limitation as to the time during which its products may be purchased, unless the offer is terminated on the specified date or within the time limitation.

(*l*) That there are no other products like or similar to Patten's Tablets enriched with Vitamins A-B-D-G which are equally as new upon the market.

(*m*) That its product Patten's Tablets enriched with Vitamins A-B-D-G is a competent treatment for loss of appetite, loss of weight, colds, infections, nervousness, fatigue, nutritional anemia, constipation, headaches, indigestion, high blood pressure, arthritis, or heart diseases.

(*n*) That its product Patten's Tablets enriched with Vitamins A-B-D-G will maintain a person's physical "fitness."

(*o*) That beneficial results from the use of Patten's Tablets enriched with Vitamins A-B-D-G are possible within a week or instantaneously.

(*p*) That the use of Patten's Tablets enriched with Vitamins A-B-D-G will prevent one from growing old.

(*q*) That the use of Patten's Tablets enriched with Vitamins A-B-D-G will cause one to have good eyesight.

(*r*) That the vitamins in Patten's Tablets enriched with Vitamins A-B-D-G are "live" or "powerful."

(*s*) That its product Patten's Tablets enriched with Vitamins A-B-D-G is a treatment.

(*t*) That the product Parsley-Garlic Tablets is a competent treatment or effective remedy for the conditions known as high blood pressure or hardening of the arteries.

(*u*) That the minerals contained in the product Parsley-Garlic Tablets are solvents and have a solvent action in the conditions known as hardening of the arteries or high blood pressure.

(*v*) That the product Parsley-Garlic Tablets is a competent treatment for colds.

(*w*) That the product Ultra-Eleven Vegetable Tablets affords any greater benefits than like or similar products.

(*x*) That the minerals which the product Ultra-Eleven Vegetable Tablets contains are solvents, have a solvent action or will dissolve uric acid or calcium deposits.

(*y*) That the use of Ultra-Eleven Vegetable Tablets is an effective or competent treatment for anemia, loss of weight, arthritis, rheumatism, "muscle and joint malnutrition," nutritional types of disorders, or general malnutrition.

(*z*) That it is not possible to obtain the same nutrition from the average diet as is obtained from the use of its product Ultra-Eleven Vegetable Tablets.

(*aa*) That the product Vegetable Broth Concentrated is unequalled in protein or mineral values by other like or similar products.

(*bb*) That the product Vegetable Broth Concentrated is alkaline or highly alkaline or has any effect on the acid-alkaline balance of the body.

(*cc*) That the product Vegetable Broth Concentrated is a competent treatment for acidosis, hyperacidity, or acid indigestion.

(*dd*) That the food value of the product Vegetable Broth Concentrated has been increased or intensified.

(*ee*) That the product B-Trate causes laxation by any new principle.

(*ff*) That B-Trate is different from other laxatives.

(*gg*) That the product Soy-Lax has tonic effects on the intestines.

(*hh*) That Soy-Lax is highly alkaline or has any effect on the acid-alkaline balance of the body; or

(*ii*) That the soy bean content of the product Soy-Lax is concentrated.

Patten Concentrates, Inc., further agreed that in the dissemination of advertising by the means and in the manner above set out, of the medical preparation now designated Patten's Kelp Tablets, 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 disseminating any advertisements representing directly or by implication that the said preparation is in all cases safe or harmless; or which advertisement fails to reveal that the preparation should not be used by those suffering from lung diseases, chronic cough, goiter, or thyroid diseases, except upon the advice of a physician, and that if a skin rash appears its use should be discontinued: *Provided, however,* That such advertisement need contain only a statement that the preparation should be used only as directed on the label thereof, if and when such label either contains a caution or warning to the same effect or specifically directs attention to a similar caution or warning statement in the accompanying labeling.

The said Patten Concentrates, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 22, 1941.)

02721. **Drug Products—Qualities, Properties, or Results, Etc.**—E. Fucini & Co., Inc., a corporation, 524 West Broadway, New York, N. Y., vendor-advertiser, was engaged in selling drug products designated Fernet Vittone and Acqua Fiuggi and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Fernet Vittone is a tonic, unless expressly limited to its effect as a gastric tonic.

(*b*) That everyone requires a tonic, stomachic, and digestive.

(*c*) That Fernet Vittone is a competent treatment or effective remedy for intestinal disturbances, or that it has any effects beyond those of a laxative, stomachic and gastric tonic.

(*d*) That Acqua Fiuggi is a competent treatment or an effective remedy for gallstones, kidney troubles, gout, calculus of the bladder, defective blood circulation or excessive uric acid.

The said E. Fucini & Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 22, 1941.)

02722. **Rat and Mouse Killing Preparation—Qualities, Properties, or Results.**—D. B. Smith and Co., Inc., a corporation, Smith Building, Main St., Utica, N. Y., vendor-advertiser, was engaged in selling a rat and mouse killing preparation designated "Jim Dandy Rat and Mouse Killer" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That "Jim Dandy Rat and Mouse Killer" will kill moles, gophers, and other rodents, except rats, wharf rats, and mice.

(*b*) That it positively stops waste caused by rodents.

(*c*) That its killing power is swift or positive or certain.

(*d*) That rodents induced to take this product do not die indoors.

(*e*) That rodents destroyed by it cause no disagreeable odors.

(*f*) That it will rid homes, barns, poultry houses, wharves, fields, warehouses, other buildings and premises of rodents.

(*g*) That it is the surest remedy for the extermination of rats and mice.

The said D. B. Smith and Co., Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 22, 1941.)

02723. **Course of Instructions—Earnings or Profits, Nature and Qualities, Properties or Results.**—John Harrington, an individual trading as Harrington Publishing Co., 201–204 Manchester Building, Portland, Oreg., vendor-advertiser, was engaged in selling a course of instructions designated "Harrington Diesel Conversion Method" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That purchasers of his product are earning from $15 to $25 per day, or that those who study his course can earn such amounts.

(*b*) That prospective purchasers of his product 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 purchasers of his product in the ordinary and usual course of business and under normal conditions and circumstances.

The said John Harrington further agreed to cease and desist from the use of the word "diesel" as a part of the name for his course of instructions, or from otherwise representing that said method will enable one to convert an ordinary gasoline engine into an engine in which the crude oil used as fuel is ignited by the heat resulting from the high compression of air drawn into the cylinders.

The said John Harrington agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 29, 1941.)

02724. **Rat and Mouse Killing Preparation—Qualities, Properties, or Results, and Government Approval.**—H. B. Smith, an individual, trading as Smith Products, 226 East Orchard Ave., Council Bluffs, Ia., vendor-advertiser, was engaged in selling a rat and mouse killing preparation designated as "Smith's Rat Kill" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Smith's Rat Kill will be taken by rats under all baiting conditions.
(*b*) That its use will stop destruction by rats.
(*c*) That rats prefer it to baby chicks.
(*d*) That rats killed by it leave no odor.
(*e*) That it is sure or quick death to rats.
(*f*) That it will stop waste due to rats.
(*g*) That it is approved by the United States Department of Agriculture.
(*h*) That it is a perfect rat killer.
(*i*) That rats will always eat it.

The said H. B. Smith agreed not to publish, or cause to be published, any testimonials containing any representations contrary to the foregoing agreement. (Jan. 29, 1941.)

02725. **Hair Preparation—Business Status, Qualities, Properties, or Results, and History.**—George A. Springstead, an individual trading as Seneca Specialties, 24 Main St., Geneva, N. Y., vendor-advertiser, was engaged in selling a hair preparation designated "Nova" and agreed, in connection with the dissemination of future advertsing, to cease and desist from representing directly or by implication:

(*a*) That he is assisted by a staff of employees when such is not the fact.

(*b*) That Nova will banish gray hair, or from otherwise importing or implying that its effect is permanent.

(*c*) That Nova will impart the original or former color or the exact desired shade to the hair, or that it will color gray hair to black or brown, or by any other terminology that it will have more than a slight coloring action upon the hair.

(*d*) That the use of Nova cannot be detected or that it will not give the hair a dyed look or that the hair color will look natural.

(*e*) That Nova is blended or balanced according to a French formula, or by any other terminology, that it is compounded according to a French formula.

The said George A. Springstead further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 29, 1941.)

02726. **Dog Food—Qualities, Properties, or Results, and Guarantee.**—Cass Bean & Grain Co., a corporation, 603 Germania Ave., Bay City, Mich., vendor-advertiser, was engaged in selling a dog food, designated Snelling's Dog Food and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Snelling's Dog Food will assure the prevention of skin diseases, constipation, body odor, foul breath, worms, and running fits.

(*b*) That Snelling's Dog Food has any effectiveness in the removal of worms which commonly inhabit the gastrointestinal tract of the dog.

(*c*) That Snelling's Dog Food will assure to the dog better health, a glossy coat, clear eyes, peppy spirit, or will assure a resistance to colds and distemper.

(*d*) That Snelling's Dog Food will assure to the dog freedom from poor bone formation, tooth decay, and nutritional deficiency diseases.

(*e*) That the advertiser guarantees its food or the results claimed by its use thereof, unless the nature and extent of such guarantee are clearly and adequately disclosed in immediate connection and conjunction with such guarantee and with equal prominence and emphasis.

The said Cass Bean & Grain Co. further agreed not to publish or cause to be published any testimonal containing any representation contrary to the foregoing agreement. (Jan. 29, 1941.)

02727. **Rat and Mice Poisoning Preparations—Qualities, Properties, or Results, and Government Endorsement.**—F. L. Wiley, an individual, doing business under the trade name Oneida Chemical Co., successor to Oneida Chemical Co., a corporation, 760 Blandina St., Utica, N. Y., vendor-advertiser, was engaged in selling rat and mice poisoning preparations designated "Rat-Bombs" and "Oneida Ratsirup" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, under his own name or a trade name or a corporate name:

1. That said products or either of them will make rats and mice go outside or underground to die except in cases where their burrows or habitants are underground or outside of the homes or other buildings.

2. That said products or either of them are effective in destroying mice other than the common house mouse.

3. That said products or either of them are endorsed by the U. S. Department of Agriculture.

The said F. L. Wiley further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 3, 1941.)

02728. **Drug Product—Qualities, Properties, or Results.**—Frank R. Waxman, an individual, Raymond-Commerce Building, Newark, N. J.,

was engaged in the business of conducting an advertising agency which disseminated advertisements for a drug product designated Bilaphen Tablets on behalf of Victoria Chemical Co., Newark, N. J., 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 goodbye 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. (Feb. 3, 1941.)

02729. **Medicinal Preparation—Qualities, Properties, or Results.**—F. B. Allderdice, an individual, trading as Arthrene Co., P. O. Box 1992, Jacksonville, Fla., vendor-advertiser, was engaged in selling a medicinal preparation designated Arthrene and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Arthrene produces circulation, reduces swelling, dissolves crystals, or cleanses the blood of uric acid.

That Arthrene is an effective remedy or cure for arthritis, neuritis, sciatica, rheumatism, or gout, or has any therapeutic value in the treatment thereof in excess of affording temporary symptomatic relief.

The said F. B. Allderdice further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 3, 1941.)

02730. **Medicinal Preparation—Qualities, Properties, or Results, Safety, and Comparative Merits.**—The Link Chemical Company, a corporation, 520½ Commercial St., Emporia, Kansas, vendor-advertiser, was engaged in selling a medicinal preparation designated "G-I-M-P First Aid" 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 an effective remedy or competent treatment for strains, sprains, muscular aches and soreness, and sore and aching joints, or that it has any therapeutic value in the treatment of the aforesaid conditions in excess of affording a temporary relief from the pains associated with such conditions when of a superficial nature; or

(*b*) That said preparation is an effective remedy or competent treatment for colds, chest colds, or coryza due to colds; or

(*c*) That said preparation is an effective remedy or competent treatment for athlete's foot or ringworm in excess of affording temporary relief from the itching associated with such conditions; or

(*d*) That said preparation penetrates into the tissues and kills infection, or that said preparation reaches "deep-seated infections," or otherwise representing that said preparation possesses penetrating power; or

(*e*) That said preparation is a competent or reliable treatment for use as a gargle after tonsilectomies or for use in postoperative dentistry; or

(*f*) That said preparation removes a cause of baldness; or

(*g*) That said preparation is the most powerful germicide that one can have in the house with absolutely no danger to children, or otherwise representing that there is no other germicide possessing equal germicidal properties which is equally safe.

The Link Chemical Co. further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Feb. 3, 1941.)

02731. **Commodities to Improve the Appearance—Professional Approval, Business Status, and Qualities, Properties, or Results.**—Lillian M. Camp, an individual, 246 Fifth Ave., New York, N. Y., vendor-advertiser, was engaged in selling various commodities to improve the appearance designated Leg Pads, Wigs and Hair Goods, and Face Lifters and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That her Leg Pads are approved by the American Medical Association.

(*b*) That she owns or controls a shop wherein she employs the makers of wigs and hair goods.

The said Lillian M. Camp further agreed to cease and desist from representing by the use of the brand name "Face Lifters," or otherwise from representing in any manner, that she possesses a commodity that will alter the shape or structure of the face.

The said Lillian M. Camp further agreed that in the dissemination of advertising, by the means and in the manner above set out, of a cosmetic preparation now designated Superior Hair Pencils, or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, she will forthwith cease and desist from representing, directly or by implication:

(*c*) That her product Superior Hair Pencils will have any effect upon the roots of the hair.

The said Lillian M. Camp agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 3, 1941.)

02732. **Rat-Killing and Mice-Killing Preparation—Qualities, Properties, or Results, Government Indorsement or Approval, and Laboratories.**—General Laboratories, Inc., a corporation, East Eighteenth and Raccoon Sts., Des Moines, Ia., vendor-advertiser, was engaged in selling a rat-killing and mice-killing preparation designated "Blue Cross Rat Kil-

ler" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Blue Cross Rat Killer will prevent rats from destroying baby chicks.

(*b*) That this particular product is recommended by the United States Government.

(*c*) That it will kill rats instantly.

(*d*) That it will rid rat-infested areas of rats.

(*e*) That it is sure death to rats.

(*f*) That it is the most effective or economical poison on the market.

(*g*) That rats that are induced to take a killing potion will not die on, or their carcasses will not contaminate, the premises.

The said General Laboratories, Inc., further agreed to forthwith cease and desist from representing by the use of the word "Laboratories" or any abbreviation thereof as part of its trade name or in any other manner or by any means that it maintains, operates, or controls a laboratory, unless and until it owns, operates, or controls an adequately equipped laboratory under the supervision and direction of a competent scientist or chemist for the conduct of experimental or research work.

The said General Laboratories, Inc., agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Feb. 3, 1941.)

02733. **Toilet Soap—Qualities, Properties, or Results.**—Paul M. Cooter, an individual, doing business as Cooter Brokerage Co., Merchandise Mart, Chicago, Ill., vendor-advertiser, was engaged in selling a certain toilet soap designated Moon Rose Complexion Soap and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Moon Rose Complexion Soap reconditions or fortifies the skin.

(*b*) That Moon Rose Complexion Soap will replace the oils of the skin.

(*c*) That Moon Rose Complexion Soap will stimulate the oil glands of the skin.

(*d*) That the use of Moon Rose Complexion Soap will cause the skin to breathe.

(*e*) That Moon Rose Complexion Soap penetrates the skin or the pores, or eliminates dirt from the pores or that it has any other effect upon the skin than to cleanse the superficial surface thereof.

(*f*) That the use of Moon Rose Complexion Soap will prevent blemishes or skin disorders.

(*g*) That the use of Moon Rose Complexion Soap will enhance the beauty of the user.

(*h*) That the use of Moon Rose Complexion Soap rejuvenates or causes one to look young; and

(*i*) That the use of Moon Rose Complexion Soap will bring about a radiantly clear complexion, free from blemishes.

The said Paul M. Cooter agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 3, 1941.)

02734. **Medicinal Preparation—Qualities, Properties, or Results.**—N. J. Newman, an individual trading as N. J. Newman Advertising Agency, 810 South Spring St., Los Angeles, Calif., was engaged in the business of conducting an advertising agency which disseminated advertisements for a medicinal preparation designated "Entromul" alleged to be of value in the treatment of various stomach and intestinal disturbances on behalf of Thomas J. McBride, an individual trading as The Entromul Co., Los Angeles, Calif., agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said preparation will have a beneficial influence on an excess acid condition of the bowels or colon.

(*b*) That said preparation has any significant value in the treatment of simple mucous colitis.

The said N. J. Newman further agreed not to disseminate or cause to be disseminated any testimonial containing any representation contrary to the foregoing agreement. (Feb. 4, 1941.)

02735. **Depilatory Product—Qualities, Properties, or Results, Unique Nature, and History.**—Kate J. Hadley, an individual trading as Mrs. W. W. Hadley, 175 Tremont St., Boston, Mass., vendor-advertiser, was engaged in selling a depilatory product designated "Indian Preparation" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That such preparation is an effective cure for superfluous hair.

(*b*) That such preparation is not a depilatory or that no similar products are used by dermatologists or sold in the proprietary trade.

(*c*) That such preparation will open the pores.

(*d*) That such preparation will loosen the hair follicles or gradually destroy or kill the roots of the hair.

(*e*) That such preparation will remove superfluous hair without injury to the skin.

The said Kate J. Hadley further agreed to cease and desist from representing through the use of the word "Indian" in the trade name, or by pictorial representations, or in any other manner of similar import or meaning, that the formula of her product originated with or was secured from the Indian race.

The said Kate J. Hadley further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 5, 1941.)

02736. **Cosmetic Cream Preparation—Comparative Merits and Qualities, Properties, or Results.**—The Pompeian Co., Inc., a corporation, 4201 Philadelphia Ave., Baltimore, Md., vendor-advertiser, was engaged in selling a cosmetic cream preparation recommended as a cleansing

agent for the skin and designated Pompeian Milk Massage Cream and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said preparation works differently, and is entirely different, from regular or ordinary cosmetic cleansing creams.

(*b*) That the use of said preparation will remove dirt to a greater extent than ordinary cleansing methods, including soap and water, or will remove "pore" deep dirt or will do more than remove the surface accumulation of dirt from the "pore" orifices.

(*c*) That said cream, when used for blackheads or whiteheads, will do more than aid in or facilitate the mechanical removal of such skin blemishes.

(*d*) That the use of said preparation will leave the face "looking years younger."

The said The Pompeian Co., Inc., further agreed not to publish or cause to be published any testimonial, containing any representation contrary to the foregoing agreement. (Feb. 5, 1941.)

02737. **Men's Clothing—Composition.**—Roy D. Pastor and Abraham Nathan, copartners, doing business under the trade name of The Roy Tailors, 21 West Third St., Cincinnati, Ohio, vendor-advertisers, were engaged in selling men's clothing and agreed, in connection with the dissemination of future advertising, to cease and desist from—

(*a*) Using the word "Virgin" to describe, designate or in any way refer to the wool fiber in any fabric used in the manufacture of their garments, when said wool fiber is not new wool which has never been reclaimed from any spun, woven, knitted, felted, or otherwise manufactured product.

(*b*) Using the word "wool," "Woolen," "all Wool," "worsted," "tropical worsted," "Cheviot," or any other word or term descriptive of wool, to describe, designate or in any way refer to any fabric or product which is not composed wholly of wool: *Provided, however,* That in the case of fabrics or products composed in part of wool and in part of other fibers such words may be used as descriptive of the wool content if there is used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof in the order of its predominance by weight, beginning with the largest single constituent: *And provided further,* That if any particular fiber in said fabrics or products is not present in a substantial amount by weight, the percentage in which such fiber is present shall then be specifically disclosed.

(*c*) Using the word "silk" to describe, designate or in any way refer to any fiber in any fabric used in the manufacture of their garments which fiber is not obtained from the cocoon of the silkworm.

The said Roy D. Pastor and Abraham Nathan also agreed that no provision contained in this stipulation shall be construed as authorizing or permitting, after July 14, 1941, the labeling of any wool product in any manner other than in strict conformity with the provisions of the Wool Products Labeling Act of 1939.

The said Roy Pastor and Abraham Nathan agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Feb. 6, 1941.)

02738. **Drug Products—Qualities, Properties, or Results.**—E. W. Rahn, an individual, Harvard Ave. and East Forty-second St., Cleveland, Ohio, vendor-advertiser, was engaged in selling drug products, designated "Rahnous Capsules" and "Rahnous Nasal Drops Number 1" and "Rahnous Nasal Drops Number 2," which nasal drops he collectively designates in the advertising as "Rahnous Nose Drops" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the products alone or in combination are an effective remedy or cure for or that they will prevent colds, hay fever, rose fever, asthma, or catarrh, or that they are a competent treatment for those conditions in excess of the affording of temporary relief from the symptoms and discomforts associated therewith.

(*b*) That either of the products is a specific.

(*c*) That by use of the products alone or in combination one will never be bothered with colds or that one will be enabled to forget colds.

(*d*) That Rahnous Capsules are of aid in building body resistance or that they regulate the body.

The said E. W. Rahn further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 10, 1941.)

02739. **Electric Fence Controllers—Approved, Tested, or Certified.**—Gamble-Skogmo, Inc., a corporation, 700 Washington Ave. North, Minneapolis, Minn., vendor-advertiser, was engaged in selling electric fence controllers designated "Gamble's Electric Fence Controller" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing, directly or by implication:

That its electric fence controllers have been approved, tested or certified by Underwriters' Laboratories, Inc., or by the National Bureau of Standards of the United States Department of Commerce. (Feb. 10, 1941.)

02740. **Drug Preparation—Nature, Qualities, Properties, or Results, Comparative Merits, and Indorsement or Approval.**—Merz & Co. Chemical Works, Inc., a corporation, Roseville Station, P. O. Box 54, Newark, N. J., vendor-advertiser, was engaged in selling a drug preparation designated Merz-Allium 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 bactericidal.

(*b*) That Merz-Allium is effective in the treatment of, or will prevent, colitis, intestinal catarrh, diarrhea, coughs, bronchitis, arthritis, rheumatism, sciatica, colic, influenza, asthma, or tuberculosis.

(*c*) That results obtained from this product are unobtainable from any other.

(*d*) That Merz-Allium is recommended by the drugless profession.

The said Merz & Co., Chemical Works, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 11, 1941.)

02741. **Medicinal Preparation—Qualities, Properties, or Results, Safety, Comparative Merits, and Laboratories.**—Sal-Fayne Corp., a corporation, Dayton, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation designated "Sal-Fayne," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said preparation banishes headaches, distress after overindulgence, periodic pains or muscular pains, or that said preparation is an effective remedy or competent treatment for postoperative pains, or that it has any therapeutic value in the treatment of the aforesaid disorders or conditions in excess of a palliative affording temporary relief; or

(*b*) Through the use of such words as "other aches and pains" or through the use of such an expression as "keeps you feeling fit" that said preparation is an effective remedy or competent treatment for aches or pains in excess of affording temporary relief from minor aches or pains; or

(*c*) That said preparation stops or prevents the development of colds or is an effective remedy for colds, or has any influence upon coughs or coryza due to colds; or

(*d*) That said preparation prevents the development of flu; or

(*e*) That said preparation relieves mental or physical dullness, refreshes or tones the nerves, or is an effective treatment for nerves; or

(*f*) That said preparation is safe for use or otherwise representing that said product is unconditionally safe for use; or

(*g*) That said preparation will not cause the unpleasant aftereffects caused by other products used for similar purposes, or otherwise representing that said preparation does not cause any unpleasant aftereffects.

The said Sal-Fayne Corp. further agreed not to publish or cause to be published any advertisement which fails to reveal that the frequent or continued use of said preparation may be dangerous, causing serious blood disturbances, and that no more than the dosage recommended should be taken: *Provided, however*, That such advertisements need contain only a statement that the preparation should be used only as directed on the label thereof, if and when such label either contains a caution or warning to the same effect or specifically directs attention to a similar caution or warning statement in the accompanying labeling.

The said Sal-Fayne Corp. further agreed to forthwith cease and desist from using 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 it has a laboratory unless it owns and operates, or controls and operates a place that is adequately and properly equipped to conduct scientific experiments and tests of the

products made and sold by it 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 Sal-Fayne Corp. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 12, 1941.)

02742. **Medicated Lozenge—Saving, History, Unique, and Qualities, Properties, and Results.**—Consolidated Royal Chemical Corp., a corporation, 544 South Wells St., Chicago, Ill., vendor-advertiser, was engaged in selling a medicated lozenge designated "Zymole Trokeys," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That this product will go twice as far at half the cost of cough syrup, thereby saving money to the user.

(*b*) That this product constitutes a new way to relief.

(*c*) That the syrupy solution obtained by melting this product in water will be beneficial to children suffering from croup.

The said Consolidated Royal Chemical Corp. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 12, 1941.)

02743. **Hair Preparation—Qualities, Properties, or Results, and Composition.**—Eva B. Smith, an individual trading as the E. B. S. Manufacturing Co., and E. B. S. Co., 730 St. Nicholas Ave., New York, N. Y., vendor-advertiser, was engaged in selling a cosmetic designated "Antiseptic Tar Hair Grower" 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 promote the growth of hair.

(*b*) That said preparation possesses antiseptic qualities or properties.

(*c*) By use of the word "eliminate" or any other word of similar import or meaning that said preparation is a remedy or cure for dandruff.

(*d*) That said preparation will eliminate itching scalp, or have any value in the treatment thereof in excess of affording temporary relief.

(*e*) That said preparation is composed of essential oils or vegetable oils.

(*f*) That by use of the words "antiseptic" or "grower" in the brand name, or by any other means, that the said preparation has antiseptic properties or will promote the growth of hair.

The said Eva B. Smith further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Feb. 12, 1941.)

02744. **Gas-Saver Mechanical Device—Qualities, Properties, or Results, History, Unique, Economy, and Saving.**—Master Gas-Saver Co., a corporation, 218 South Wabash Ave., Chicago, Ill., vendor-advertiser, was engaged in selling a mechanical device designated "Master Gas-Saver"

and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the Master Gas-Saver reduces carbon, makes starting easy, eliminates sludge or deposits, or that any gain in power or miles per gallon will result from the use of this device on any automobile having a correctly adjusted carburetor of proper size.

(*b*) That the Master Gas-Saver increases riding efficiency or improves the general performance of any motor or that the said device stops gasoline waste.

(*c*) That the Master Gas-Saver is a supercharger or operates as a supercharger or is new or different from other devices used for the same purpose.

The said Master Gas-Saver Co. further agreed to forthwith cease and desist from using the word "Gas-Saver" to designate, or refer to the said device or from using any other terminology representing directly or by implication that the said device is a gasoline economizer.

The said Master Gas-Saver Co. further agreed to forthwith cease and desist from using the word "Gas-Saver" as part of its corporate or trade name or any other word or words that represent or infer that its product will save gasoline.

The said Master Gas-Saver Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 13, 1941.)

02745. **Medicinal Preparation—Qualities, Properties or Results, Comparative Merits, and Safety.**—A. Medrano, an individual doing business under the trade name of Rumagol Laboratories, Rio Grande Pharmacy, and Rio Grande Drug Co., 4164 Brooklyn Ave., Los Angeles, Calif., vendor-advertiser, was engaged in selling a medicinal preparation designated "Rumagol" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That it is a competent remedy or an effective treatment or analgesic for rheumatoid arthritis, muscular pains, lumbago, sciatica, gout, neuritis, arteriosclerosis, painful or twisted joints or nerves, or so-called "rheumatism."

(*b*) That it will reduce and eliminate excess uric acid by its action on the kidneys.

It is also agreed by the said A. Medrano that in connection with the dissemination of advertising by the means and in the manner above set out, he will forthwith cease and desist from representing, directly or by implication:

(*c*) That preparations sold in competition with RUMAGOL such as rubefacient or counter-irritating liniments or ointments are ineffective in the treatment of rheumatoid arthritis, muscular pains, lumbago, gout, sciatica, neuritis, arteriosclerosis, painful or twisted joints or nerves, or so-called "rheumatism."

The said A. Medrano further agreed, in connection with the advertising by the means and in the manner above set out, to cease

and desist from disseminating any advertisements for the said preparation which fail to reveal that it should not be used when abdominal pain (stomach ache, cramps, colic), nausea, vomiting (stomach sickness), or other symptoms of appendicitis are present, and also that frequent or continued use thereof may result in dependence on laxatives: *Provided, however*, That such advertisements need contain only a statement that the preparation should be used only as directed on the label thereof, if and when such label either contains a caution or warning to the same effect or specifically directs attention to a similar caution or warning statement in the accompanying labeling.

The said A. Medrano further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 17, 1941.)

02746. **Drug Product—Qualities, Properties or Results, and Composition.**—H. Pierce Weller, an individual operating under the trade name of Weller Co., P. O. 98, Atascadero, Calif., vendor-advertiser, was engaged in selling a drug product designated "Vitey Perles," 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 increase energy.

(*b*) That the product has any effect whatever without expressly limiting such claims to cases where there is a lack or deficiency of vitamin E.

The said H. Pierce Weller further agreed to cease and desist from representing by reference to Vitey Perles as containing the sex vitamin or as containing the "spark plug" that sets the sex hormones in motion, or by referring to "men and women" in conjunction with pictorial representations of a bride within a heart or in any other manner or by any other means that Vitey Perles stimulates sexual desire or ability.

The said H. Pierce Weller further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 19, 1941.)

02747. **Medicinal Preparation—Qualities, Properties, or Results, Etc.**—Thymo Borine Laboratory, a corporation, 810 North Plankinton Ave., Milwaukee, Wis., vendor-advertiser, was engaged in selling a medicinal preparation for use as a mouth wash, deodorant, and antiseptic, designated "Thymo Borine" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Thymo Borine purifies the breath or eliminates, stops, or guards against bad breath.

(*b*) That Thymo Borine penetrates hidden crevices or keeps the mouth hygienically clean; or that Thymo Borine is unsurpassed as a deodorant.

(*c*) That Thymo Borine stops perspiration odors or foot odors, or relieves aching feet, or that Thymo Borine mitigates inflammation or stops the irritation or the pain of sunburn.

(*d*) That Thymo Borine stops pain or mitigates inflammation of sore mouths due to use of artificial teeth, or that Thymo Borine insures facial comfort or allays irritation of tender skin, or eliminates irritation due to chapped hands or chafed skin.

(*e*) That Thymo Borine is a competent treatment or effective remedy for itching scalp or itching skin due to bites, poisons or hives, or that Thymo Borine is substantially efficacious in the treatment of athlete's foot, or that it prevents or checks colds, or that Thymo Borine enjoys usage among Wisconsin dentists greater than is actually the fact.

(*f*) That Thymo Borine is an effective germicide when used as a gargle, or that the efficacy of a mouth wash, antiseptic, or deodorant depends upon its specific gravity.

The said Thymo Borine Laboratory further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 24, 1941.)

02748. **Medicinal Preparations—Nature, Qualities, Properties, or Results, Etc.**—Ferdinand Pettinella, an individual operating under the trade name of Pettinella Advertising Co., 15 Sheridan Square, New York, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for medicinal preparations designated Fernet Vittone and Acqua Fiuggi on behalf of E. Fucini & Co., Inc., 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 Fernet Vittone is a tonic, unless expressly limited to its effect as a gastric tonic.

(*b*) That everyone requires a tonic, stomachic and digestive.

(*c*) That Fernet Vittone is a competent treatment or effective remedy for intestinal disturbances, or that it has any effects beyond those of a laxative, stomachic and gastric tonic.

(*d*) That Acqua Fiuggi is a competent treatment or an effective remedy for gallstones, kidney troubles, gout, calculus of the bladder, defective blood circulation or excessive uric acid. (Feb. 25, 1941.)

02749. **Medicated Lozenge—Saving, History, Unique, and Qualities, Properties, and Results.**—Benson & Dall, Inc., a corporation, 327 South LaSalle St., Chicago, Ill., was engaged in the business of conducting an advertising agency which disseminated advertisements for a medicated lozenge designated Zymole Trokeys, an alleged treatment for coughs due to colds, throat irritations, and croup, on behalf of Consolidated Royal Chemical Corp., Chicago, Ill., and agreed, in connection

with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That this product will go twice as far at half the cost of cough syrup, thereby saving money to the user.

(*b*) That this product constitutes a new way to relief.

(*c*) That the syrupy solution obtained by melting this product in water will be beneficial to children suffering from croup. (Feb. 25, 1941.)

02750. **Baby Chicks—Inspected, Etc.**—Raymond McDonald and Roy McDonald, copartners, operating under the trade name of McDonald's Hatchery, 2830 Evans Ave., Box 1665, Fort Worth, Tex., vendor-advertisers, were engaged in selling baby chicks and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That their flocks are inspected by the U. S. Department of Agriculture.

(*b*) That said flocks are inspected or mated by an impartial or disinterested judge of the American Poultry Association, when such is not a fact.

The said Raymond McDonald and Roy McDonald agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 12, 1941.)

02751. **Medicinal Preparation—Safety.**—J. H. Schenck & Son, Inc., a corporation, P. O. Box 1861, Philadelphia, Pa., vendor-advertiser, was engaged in selling a medicinal preparation recommended for the treatment of constipation designated "Dr. Schenck's Mandrake Pills" and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisements which fail to reveal that the said pills should not be used when abdominal pain (stomach-ache, cramps, colic), nausea, vomiting (stomach sickness) or other symptoms of appendicitis are present, and that frequent or continued use thereof may result in dependence on laxatives: *Provided, however*, That such advertisements need contain only a statement that the preparation should be used only as directed on the label thereof, if and when such label either contains a caution or warning to the same effect or specifically directs attention to a similar caution or warning statement in the accompanying label.

The said J. H. Schenck & Son, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 3, 1941.)

02752. **Medicinal Preparation and Cosmetic—Qualities, Properties, or Results.**—Norman A. Hoel, Mrs. Wm. G. Cook, C. W. Almklov, and Sigurd Almklov, copartners, doing business under the trade name of Almklov's Pharmacy, Cooperstown, N. Dak., vendor-advertisers, were engaged in selling a medicinal preparation designated X. E. M.

Salve and a cosmetic designated as Almklov's Scalp and Hair Tonic and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That X. E. M. Salve is a remedy or cure for eczema, barber's itch, refractory cases of ringworm, athlete's foot, psoriasis, old sores, ulcers, itching hemorrhoids, dandruff, or itching skin affections or eruption, or that it will remove the cause of the diseases or conditions, or that it has any therapeutic value in the treatment thereof in excess of affording symptomatic relief of itching and irritation.

(*b*) That Almklov's Scalp and Hair Tonic extirpates dandruff, cures itching scalp, keeps the hair from falling out, or penetrates the skin to extirpate the bacilli.

The said Norman A. Hoel, Mrs. Wm. G. Cook, C. W. Almklov, and Sigurd Almklov further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Mar. 10, 1941.)

02753. **Drug Products—Qualities, Properties, or Results.**—William Ganson Rose, Inc., a corporation, 522 Terminal Tower, Cleveland, Ohio, was engaged in the business of conducting an advertising agency which disseminated advertisements for drug products designated Rahnous Capsules, Rahnous Nasal Drops Number 1 and Rahnous Nasal Drops Number 2 on behalf of E. W. Rahn, Cleveland, Ohio, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the products alone or in combination are an effective remedy or cure for or that they will prevent colds or catarrh or that they are a competent treatment for those conditions in excess of the affording of temporary relief from the symptoms and discomforts associated therewith.

(*b*) That by use of the products alone or in combination one will never be bothered with colds or that one will be enabled to forget colds.

(*c*) That Rahnous Capsules are of aid in building body resistance or that they regulate the body. (Mar. 18, 1941.)

02754. **Health Food Products—Qualities, Properties, or Results, and Composition.**—Mariano Pollina, an individual operating under the trade names of Vimm Wheat Germ Products Co. and Moderno Co., 16 West Twenty-second St., New York City, vendor-advertiser, was engaged in selling health food products designated Fortified Palm-Co, Plain Palm-Co, Vimm's Whole Wheat Germ, and Vimm's Wheat Germ Oil Capsules and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Vimm's Wheat Germ Oil Capsules:

1. Assure good health.
2. Assure sex vigor for men.
3. Are conducive to avoidance of pain, miscarriage or sterility in women.

4. Rebuild the health of the entire body.
5. Normalize, strengthen, revive or prolong the sex and reproductive functions.
6. Build body or mental health.
7. Overcome sexual weakness or sterility.
8. Are of any benefit in the prevention or treatment of tumor growths or degenerative changes of old age; or
9. Are certified for any specified results.

(*b*) That Fortified Palm-Co:

1. Prevents tooth decay, premature aging, nervousness, or acidity.
2. Is essential for growing children or for pregnant women.
3. Aids menstruation, or aids during the menstrual period.
4. Assures robust health.
5. Increases resistance to disease; or
6. Is of any appreciable benefit in the treatment or the prevention of poor teeth, early aging, lowered resistance, nervousness, underweight, bone disease, or weakened heart.

(*c*) That Plain Palm-Co:

1. Assures digestive vigor.
2. Is a perfect natural food.
3. Contains the greatest possible concentration of vital, health-forming elements in digestible form.
4. Is rich in Vitamin B.
5. Is completely alkaline-forming.
6. Is teeming with vitamins and minerals; or
7. Is of any appreciable benefit to sufferers from colitis, weak stomach, sour stomach, nervous indigestion, indigestion, stomach ulcers, or flatulence.

(*d*) That Vimm's Whole Wheat Germ:

1. Is the world's richest natural source of Vitamins B, E, and G.
2. Is a good source of Vitamins A and C.
3. Is concentrated with iron, copper, potassium, magnesium and manganese, or any of these elements; or
4. Will enable one to sleep better, eat better, feel better, or look better.

The said Mariano Pollina further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 14, 1941.)

02755. **Medicinal Preparation—Qualities, Properties, or Results.**—Ferd. T. Hopkins, an individual operating under the trade name of Ferd. T. Hopkins & Son, 430 Lafayette St., New York City, vendor-advertiser, was engaged in selling a medicinal preparation designated Mothersill's Seasick Remedy and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Mothersill's Seasick Remedy will prevent or stop travel sickness or assure travel comfort.

The said Ferd. T. Hopkins further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 14, 1941.)

02756. **Book on Hair Culture.—Nature and Results.**—Macfadden Book Co., Inc., a corporation, 205 East Forty-second St., New York, N. Y., vendor-advertiser, was engaged in selling a book embracing a discourse on the care of the hair entitled "Hair Culture" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That its book contains methods, advice, or instructions which, when observed and applied, will prevent, correct the cause of, or cure, baldness, dandruff, brittleness, split hair, or greying hair; or that will prevent or stop falling hair where such condition is not caused by improper scalp hygiene; or that will increase the strength of the hair.

The said Macfadden Book Co., Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 20, 1941.)

02757. **Hair Preparations—Qualities, Properties, or Results, and Comparative Merits, Etc.**—John H. Breck, Inc., a corporation, Springfield, Mass., vendor-advertiser, was engaged in selling Breck's Hair Tonic No. 1A, Breck's Hair Tonic No. 1B, Breck's Hair Tonic No. 3, Breck's Lather-Oil pH8 Shampoo, Breck's Special Scalp Cream, Breck's No. 1 Hair Cream, Breck's No. 2 Hair Cream, and Breck's Ointment and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, or by pictorial illustration or otherwise that any of the above-named medicinal preparations or cosmetics, or any other product of substantially the same composition or possessing substantially the same properties, whether used alone or in combination with any other product—

(*a*) Is a departure from other systems of treatment for the alleviation of hair and scalp troubles, or that it is a competent treatment or an effective remedy for eczema of the scalp, psoriasis, alopecia areata, or for headache, troublesome monthly periods, or sick stomach.

(*b*) Is an effective remedy for adhesions or that it will bring about a normal condition of the scalp connective muscles; or that it will cause hair to grow, save the old hair, stop or prevent falling hair or atrophy of the hair, the excessive loss of hair, start, bring in, or encourage a new growth, quicken the growth of hair, or delay the graying of hair; or that it will prevent the loss of hair following erysipelas, scarlet fever, measles, typhoid fever, influenza, or child birth, or will restore or aid in restoring hair where the loss is due to such causes.

(*c*) Will bring back to the scalp normal healthfulness; or that it will obviate the necessity for glasses; or that it would enable one to avoid an operation for stomach trouble.

(*d*) Will eradicate parasites or germs, or prevent future troubles.

(*e*) Is superior to any scalp treatment, or that it is more scientific or effective than electrical or mechanical contrivances; or

(*f*) That the daily use of water on the hair causes falling hair or the atrophy of the hair; or

(*g*) That by the use of Breck's hair preparations, in conjunction with a finger massage, the hair is supplied with the proper nourishment.

The said John H. Breck, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 19, 1941.)

02758. **Rat and Mouse Killing Preparation—Qualities, Properties, or Results, and Comparative Merit.**—J. L. Hopkins & Co., Inc., a corporation, 220 Broadway, New York, N. Y., vendor-advertiser, was engaged in selling a rat-killing preparation designated "Red-Rat-Squil" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Red-Rat-Squil will kill rodents other than rats and mice.

(*b*) That it is the surest way to destroy rats and mice.

(*c*) That it is the most satisfactory way to destroy rats and mice.

(*d*) That it will check obnoxious odors.

(*e*) That tests of the product guarantee uniformity of toxic strength.

(*f*) That baits mixed with it and exposed to the air will not over a protracted period of time become rancid.

The said J. L. Hopkins & Co., Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 19, 1941.)

02759. **Medicinal Preparation—Qualities, Properties, or Results.**—W. F. Young, Inc., a corporation, 111 Lyman St., Springfield, Mass., vendor-advertiser, was engaged in selling a medicinal preparation designated "Absorbine, Jr." and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly, or by implication, that said preparation:

(*a*) Kills the fungi of athlete's foot so as to represent that it kills such fungi as are buried beneath the corneous layer of the skin.

(*b*) Has any effect upon tissues deeper than those supplied by the peripheral vascular system or that accepted laboratory tests proved that it achieves such results. (Mar. 21, 1941.)

02760. **Rat and Mice Killing Preparation—Qualities, Properties, or Results, Government Indorsement, or Approval, Etc.**—V. H. Bean and M. C. Bean, copartners trading as St. Clair Co., Post Office Box 666, Findlay, Ohio, vendor-advertisers, were engaged in selling a rat-killing and mice-killing preparation designated "Shur-deth" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That "Shur-Deth" will drive rats and mice outside to die.

(*b*) That it is the most effective raticide known.

(*c*) That it is the original preparation of rat foods in combination with red squill.

(*d*) That this particular product is recommended or approved by the United States Department of Agriculture.

The said V. H. Bean and M. C. Bean agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Mar. 19, 1941.)

02761. **Hair Preparation—Qualities, Properties, or Results, and Hair Grower."**—Grace McLendon, an individual trading as Grace McLendon's Hair Products, 904 Wesley Ave., Pleasantville, N. J., vendor-advertiser, was engaged in selling a preparation designated "Mme. Grace McLendon's 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 will—
(*a*) Stop falling hair.
(*b*) Remove dandruff.
(*c*) Prevent hair from turning gray.
(*d*) Restore gray hair to its natural color; or
(*e*) Cause hair to grow.

The said Grace McLendon further agreed that in the dissemination of advertising by the means and in the manner above set out, she will cease from representing by the use of the words "Hair Grower" in the designation of her preparation, or of any words of similar import or meaning, that said preparation will grow hair.

The said Grace McLendon further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 25, 1941.)

02762. **Coffee—History, Unique, Comparative Merits, Etc.**—Paxton and Gallagher Co., a corporation, Omaha, Nebr., vendor-advertiser, was engaged in selling a beverage designated "Butter-Nut Coffee" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That it discovered a new or extraordinary process of maturing coffee or that its method of maturing coffee is a special process or a new or exclusive method or process.

(*b*) That its method of maturing coffee eliminates all trace of harshness or coffee acids, or that it is impossible to make a harsh-tasting coffee from Butter-Nut coffee.

(*c*) That a pound of Butter-Nut coffee makes more cups of coffee than a pound of any other coffee.

The said Paxton and Gallagher Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreements. (Mar. 28, 1941.)

02763. **Beauty Device—Qualities, Properties, or Results.**—Inspiré, Inc., a corporation, 552 Mission St., San Francisco, Calif., and Edgar D. Sloat, individually and as president of Inspiré, Inc., 552 Mission St., San Francisco, Calif., vendor-advertisers, were engaged in selling a

device designated "Deep-Skin Electro-Mask" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That this device will reestablish natural functions of the under-skin, glands, circulation, or nervous system, or that it will normalize the skin or revitalize the tissues.

(*b*) That the device is an effective remedy for wrinkles, crow's-feet, lines, enlarged pores, pimples, blackheads, dry skin, or oily skin.

(*c*) That this product accomplishes all the benefits of the most extravagant salon facial.

(*d*) That this device is a sure means of attaining beauty.

Inspiré, Inc., and Edgar D. Sloat, further agreed to cease and desist from the use of the words "Deep Skin" as a part of the brand name for this product, or from representing in any manner, directly or indirectly, that the effect of this device extends deeply into the skin, or is more than a surface application, or that it has any effect directly upon the dermis, or that it acts from the inside outward.

The said Inspiré, Inc., and Edgar D. Sloat further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 1, 1941.)

02764. **Medicinal Product—Qualities, Properties, or Results.**—Emanuel Kaucky, an individual, trading as Kaucky's Pharmacy, 6348 West Twenty-sixth St., Berwyn, Ill., vendor-advertiser, was engaged in selling a medicinal product designated "Kaucky's Formula Herb Tea" 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 cause one to have a clean body or a clear mind.
2. Will cause the system to return to normal.
3. Is a system regulator.
4. Purifies or clears the skin.
5. Relieves rheumatism.

(*b*) That the product has any therapeutic value in the treatment of headaches in excess of affording relief from headaches due to constipation.

(*c*) That the product has any therapeutic value in the treatment of constipation or stomach, intestinal, or bladder or kidney ailments in excess of that afforded by a laxative and diuretic.

The said Emanuel Kaucky further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 1, 1941.)

02765. **Bath Cabinets—Qualities, Properties, or Results.**—Burton G. Feldman and Associates Inc., a corporation, 540 North Michigan Ave., Chicago, Ill., was engaged in the business of conducting an advertising agency which disseminated advertisements for the vapor-electric bath cabinets alleged to be of value for weight-reducing purposes,

designated "Beauty Builder" and "Beauty Fount" on behalf of Gellman Manufacturing Co., Rock Island, Ill., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That said cabinets 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 "cure," "banish," or "erase" fatigue.

The said Burton G. Feldman and Associates Inc. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 2, 1941.)

02766. **Chicken Feeds—Qualities, Properties, or Results, and Comparative Merits.**—The Potts-Turnbull Co., a Missouri corporation, 912 Baltimore Ave., Kansas City, Mo., was engaged in the business of conducting an advertising agency which disseminated advertisements for chicken feeds designated "Gooch's Best Growing Mash," "Gooch's Best Starting Feed" and "Gooch's Best Laying Mash" on behalf of Gooch Feed Mill Co., Lincoln, Nebr., 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. (Apr. 2, 1941.)

02767. **Medicinal Preparation—Qualities, Properties, or Results.**—The Adlerika Co., a corporation, 98 South Wabasha St., St. Paul, Minn., vendor-advertiser, was engaged in selling a medicinal preparation designated "Adla Tablets," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That its product will bring about neutralization of hyperacidity or bring relief from "acid stomach."

(*b*) That its product will protect irritated parts or membranes of the stomach in any manner whatsoever, or form a protective coating over the stomach parts or membranes.

The said The Adlerika Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 2, 1941.)

02768. **Device for Testing Urine—Unique and Comparative Merits.**—Alfred Muller, an individual trading as the Diatest Laboratories, 1133 Broadway, New York, N. Y., vendor-advertiser, was engaged in selling a device designated "Diatest Tester" 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 the only tester for determining the sugar content of urine which does not use or require flame.

(*b*) That it is the most accurate tester available for determining the sugar content of urine.

The said Alfred Muller further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Apr. 2, 1941.)

02769. **Preparations for Poultry and Animals—Qualities, Properties, or Results, and Endorsement or Approval.**—W. C. Stewart, an individual, trading as the Knox-All Co., 18 West Exchange St., Freeport, Ill., vendor-advertiser, was engaged in selling various preparations for poultry and animals designated "K-A Poultry Spray," "K-A Fur Farm Fluid," "K-A Neptol Tablets," and "K-A Alroc Tablets" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That K-A Poultry Spray prevents or eliminates cold, roup, or other poultry diseases.

(*b*) Keeps the flock or the poultry house free from mites or bluebugs; is effective in fighting mites or bluebugs on roosting fowls; kills bluebugs; or kills mites unless the spray is persistently applied over long periods, and unless limited to mites with which it comes in contact.

(*c*) Penetrates to all parts of the poultry house; aids in killing germs before they attack the birds or in preventing the maturity of unhatched mites; is of material benefit to baby chicks; checks death losses; keeps chickens healthy; will do everything that is claimed for it; or is used or endorsed by leading hatcheries.

(*d*) That K-A Fur Farm Fluid destroys vermin which infest animals; nourishes follicular growth; is effective against fleas, lice or ticks on fur bearing animals; effectively combats earmites.

(*e*) That the product K-A Neptol Tablets is effective against symptoms of diarrhea, sour crop, poor appetite, or temporary constipation; cleans out the intestines or tones the system; or aids in the prevention or elimination of coccidiosis.

(*f*) That the product K-A Alroc Tablets is effective in the control of cholera, or typhoid in chickens, turkeys, geese, or ducks.

The said W. C. Stewart further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 3, 1941.)

02770. **Drug Preparations—Qualities, Properties, or Results.**—S. D. Cates, an individual operating under the trade name of Buel Co., 800

North Clark St., Chicago, Ill., vendor-advertiser, was engaged in selling two drug preparations designated "Buellene" and "Hot Oil Treatments" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That any of his products will increase the growth of hair or is a hair grower.

(*b*) That Buellene is effective in the treatment of falling hair or of dandruff, unless limited to assisting in the removal of accumulated dandruff scales.

(*c*) That his Hot Oil Treatments make the hair healthy or stop brittle, breaking hair.

The said S. D. Cates further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 7, 1941.)

02771. **Medicinal Preparation—Composition and Qualities, Properties, or Results.**—Fred Miller, an individual doing business under the trade name The Miko Co., 2521 Thirty-first Ave., Long Island City, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated "Circulin Garlic Pearls" 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 "Circulin Garlic Pearls," or any other preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name:

(*a*) That "Circulin Garlic Pearls" are rich in body-building materials such as manganese, sodium, calcium, iodine, and phosphates.

(*b*) That "Circulin Garlic Pearls" have value in relieving symptoms of nervousness, dizziness, tiredness in excess of temporarily relieving such symptoms when associated with high blood pressure.

(*c*) That "Circulin Garlic Pearls" are efficacious as a worm dispeller for children or for diarrhoea.

(*d*) That the elements producing the strong odor in garlic also drive away the impurities from the system.

(*e*) That "Circulin Garlic Pearls" are efficacious in the treatment of gastro-intestinal disturbances of a toxic character in excess of such temporary relief as may be afforded in those cases where a carminative stomachic is indicated.

(*f*) That "Circulin Garlic Pearls" are efficacious in the treatment of coughs, bronchitis, or bronchial asthma.

(*g*) That "Circulin Garlic Pearls" tend to promote and regulate metabolism.

(*h*) That "Circulin Garlic Pearls" contain allyl sulphide, allyl isothracyanate, protein, or mineral salts.

Said Fred Miller further agreed not to publish or cause to be published any testimonials containing any representation contrary to the foregoing agreement. (Apr. 8, 1941.)

02772. **Cosmetic Preparation—History, Unique, and Employment.**—P. Edwards, an individual operating under the trade name of The Nix

Cosmetics Co., Post Office Box 463, Memphis, Tenn., vendor-advertiser, was engaged in selling a cosmetic preparation designated "Nix Bleach Cream" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Nix Bleach Cream affects the skin in a new way, or a way different from that of other preparations.

That said P. Edwards further agreed to cease and desist from representing, or by the use of a headline or otherwise, that any girls are "wanted," or from otherwise representing, importing, or implying that he has any employment to offer. (Apr. 8, 1941.)

02773. **Dentifrice—Qualities, Properties, or Results, and Success or Use of Product.**—James J. Walker, Jr., an individual, 3614 Calumet Ave., Chicago, Ill., vendor-advertiser, was engaged in selling a dentifrice designated "Walker's Famous Tooth Powder" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Walker's Famous Tooth Powder stops receding or bleeding gums or makes gums firm or sound or heals gums or that the said product tightens loose teeth or makes the teeth white.

(*b*) That millions of people use Walker's Famous Tooth Powder or that any specified number of people use the said product when such is not the fact.

The said James J. Walker, Jr., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 8, 1941.)

02774. **Olive Oil—Qualities, Properties, or Results, and Composition.**—Parisis J. Gerogian, an individual operating under the trade name of Standard Products Co., 102–104 Commercial St., Boston, Mass., vendor-advertiser, was engaged in selling a certain food product designated Gloria Pure Olive Oil (Agorelaion) and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That this product will be of any appreciable benefit in preventing or remedying a lack of appetite.

(*b*) That this olive oil contains all of the vitamins or appreciable quantities of any of them.

(*c*) That the use of this product will insure good health.

The said Parisis J. Gerogian further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Apr. 8, 1941.)

02775. **Medicinal Preparation—Qualities, Properties, or Results, Source, or Origin, and Nature.**—Hevenor Advertising Agency, Inc., a corpora-

tion, 11 North Pearl St., Albany, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for a medicinal preparation designated "Grover Graham Remedy" on behalf of S. Grover Graham Co., Inc., of Newburgh, N. Y., and agreed, in connection with dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That it will afford relief from acid indigestion in five minutes or within any specified period of time.

(*b*) That its formula was originated or used by a European specialist.

(*c*) That its use enables an individual to eat food without fear of stomach distress.

(*d*) That it corrects or cures excessive stomach acidity, and

(*e*) That it stops or ends the pain or symptoms of acid indigestion.

The said Hevenor Advertising Agency, Inc., further agreed that in disseminating advertising for a medicinal preparation now designated Grover Graham Remedy by the means or in the manner above set out, it will forthwith cease and desist from disseminating or causing to be disseminated any advertisements which use the word "remedy" or any similar word or words as a part of the trade name of said medicinal preparation or in any other manner so as to import or imply that said preparation is anything more than a treatment to temporarily neutralize gastric acidity and to temporarily relieve the pain caused thereby.

The said Hevenor Advertising Agency, Inc., further agreed not to disseminate or cause to be disseminated any testimonial containing any representation contrary to the foregoing agreement. (Apr. 9, 1941.)

02776. **Skin Preparation—Qualities, Properties, or Results.**—Grace Donohue, Inc., a corporation, 640 Madison Ave., New York, N. Y., vendor-advertiser, was engaged in selling a product designated "Grace Donohue Cleanser," recommended as a healing agent, a remedy for blackheads, whiteheads, oily skin, and other skin conditions and as a preserver of the complexion 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*) a remedy or cure for, or works wonders with, blackheads or whiteheads.

(*b*) a healing agent.

(*c*) an efficient method for preserving a clear, smooth, or attractive complexion.

(*d*) beneficial in the treatment of acne, crow's feet, lines under eyes, double chin, frown lines in forehead or between the eyes, "jowls," neck wrinkles, or crepey, loose, or flabby skin, enlarged pores, or overweight, or to oily or dry skin.

Grace Donohue, Inc., further agreed to cease and desist from stating in its advertising that excess fatty acids or waste products impede normal elimination of the skin.

The said Grace Donohue, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 9, 1941.)

02777. **Cosmetic Preparations—Qualities, Properties, or Results, and Nature.**—Eleanor H. Mack, an individual operating under the trade name of Mack Brothers Products, Box 115, Hillcrest Station, San Diego, Calif., vendor-advertiser, was engaged in selling cosmetic preparations including Revel No. 9 Resuscitator Oil, Revel No. 6 Lipid Cream, Revel No. 16 Mouth Creme, and Revel No. 1 Pore Cleansing and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Revel No. 6 Lipid Cream is of any appreciable benefit in the treatment of aged or crepey skin.

(*b*) That Revel No. 16 Mouth Creme is of value in the treatment of bleeding or receding gums.

Eleanor H. Mack further agreed to cease and desist from the use of the word "Resuscitator" as a part of the brand name for her product heretofore designated "Revel No. 9 Resuscitator Oil," or from otherwise representing that it restores life or the appearance of youth to the skin.

Eleanor H. Mack further agreed to cease and desist from the use of the phrase "Pore Cleansing" as a part of the brand name for her product heretofore designated "Revel No. 1 Pore Cleansing," or from otherwise representing that it will remove all foreign matter from the pores.

Eleanor H. Mack further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 9, 1941.)

02778. **Tonic and Vitamin Products—Qualities, Properties, or Results, Nature, and Composition.**—G. S. Cheney Co., a corporation, 15 Union St., Boston, Mass., vendor-advertiser, was engaged in selling tonic and vitamin products designated as "Cheney's Nurve (Nerve) Phosphates" and "Cheney's Vitamins Complete" 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 food or a stimulant for the nerves.

(*b*) That said preparation acts on the nerves of the stomach or brain.

(*c*) That said preparation is beneficial in the relief or treatment of fatigue, sleeplessness, headache, or nervousness.

(*d*) That the lecithin contained in said preparation will add to the phosphorus constituent of brain and nerve substance.

(*e*) That the lecithin contained in said preparation will help form a natural coating for raw nerves.

(*f*) By the use of the words "nerve" or "nurves" or any other words of similar sound, import, or meaning in the name of said preparation that it is of any value for bodily ailments caused by disorders in the nervous system.

It is hereby further agreed by G. S. Cheney Co. that in the dissemination of advertising by the means and in the manner above set out of a medicinal and vitamin preparation now designated as "Cheney's Vitamins Complete," whether sold under that name or any other name or any other preparation of substantially the same composition or possessing substantially the same properties, it will forthwith cease and desist from representing directly or by implication:

(*g*) That "Cheney's Vitamins Complete" added to the daily diet is a health secret or will make one feel well or improve one's appearance.

(*h*) That "Cheney's Vitamins Complete" is a valuable accessory to one's daily diet unless it is clearly stated in direct connection therewith that it is valuable only in case there is a deficiency of the vitamins and minerals contained in this product.

(*i*) That Vitamin A is anti-infective to colds.

The said G. S. Cheney Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 10, 1941.)

02779. **Medicinal Preparation—Professional Indorsement or Approval and Qualities, Properties, or Results.**—Alton W. Eldredge, an individual doing business as Melrose Eldredge Co., Melrose, Mass., vendor-advertiser, was engaged in selling a medicinal preparation designated Dr. Eldredge's Approved Rectal Jelly, which has been alleged to be helpful in the treatment of piles, 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 terms "Doctor," "Dr.," or "approved" as a part of the brand name of the aforesaid preparation, or in any other manner that the said preparation has the official approval or recommendation of any group of doctors or pharmacists or that the said preparation was formulated by a physician.

(*b*) That the said preparation will cure piles.

(*c*) That the said preparation has any therapeutic effect upon the symptoms of piles except to the extent that it may act as an astringent, provide some antiseptic action, or afford the soothing effect of an emollient.

(*d*) That the said preparation will penetrate, pass, or pierce into or through the muscles and tissue folds of the rectum.

(*e*) That the said preparation will always furnish piles sufferers with relief.

The said Alton W. Eldredge further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 11, 1941.)

02780. **Medicinal Preparation—Qualities, Properties, or Results, Unique, and History.**—Newby, Peron & Flitcraft, Inc., a corporation, 222 West Adams St., Chicago, Ill., was engaged in the business of conducting an advertising agency which disseminated advertisements for a medicinal preparation in liquid form containing potassium iodide and designated "Respirine" on behalf of Albert Laboratories, Inc., of Chicago, Ill., and agreed, in connection with the dissemination of future

advertising, to cease and desist from representing directly or by implication:

(*a*) That such preparation is a competent treatment or an effective remedy for asthma, bronchial coughs, or bronchitis, or that it will do any more with respect to these conditions than afford some temporary relief from the accompanying symptoms.

(*b*) That such preparation relieves symptoms accompanying hay fever.

(*c*) That such preparation promotes healing.

(*d*) That such preparation is unique or distinctly new or that it represents a discovery. (Apr. 14, 1941.)

02781. **Medicinal Preparations—Qualities, Properties, or Results, History, Source or Origin, License, Nature, Composition, Etc.**—S. Grover Graham Co., Inc., a corporation, 75 Second St., Newburgh, N. Y., vendor-advertiser, was engaged in selling certain medicinal preparations designated "Grover Graham Remedy" and "Graham's Butternut Pills" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that:

(*a*) It is a remedy or cure for digestive dysfunctions.

(*b*) It possesses tonic or restorative properties.

(*c*) It will cause the digestive organs to become healthy.

(*d*) It will cause an increase of gastric juices.

(*e*) It will cause or have any effect on the assimilation of food.

(*f*) It will cause or insure healthy digestion.

(*g*) It will afford relief in 5 minutes or after the first dose or within any specified period of time.

(*h*) It is a discovery.

(*i*) Its formula was originated or perfected by a European specialist.

(*j*) It is or has been used by a European specialist.

(*k*) S. Grover Graham Co., Inc., has been granted a license or any exclusive right to use this formula.

(*l*) Its use insures freedom from physical distress or relief for gastric dysfunctions.

(*m*) It assists in the digestion of food.

(*n*) It prevents irritation of the digestive organs.

(*o*) It prevents bacterial fermentation.

(*p*) It restores the motor functions of cells.

(*q*) Its use will enable one to eat any food.

(*r*) It is a specific.

(*s*) It will afford immediate or permanent relief from any disease or disorder.

(*t*) It will afford quicker relief from stomach disorders than any other product for the same or similar purpose or that it will afford relief where other like or similar preparations for the same purpose would not.

(*u*) It is a treatment for all stomach disorders or for any disease caused by a stomach disorder.

(*v*) It will have any effect on intestinal fermentation.

(*w*) It removes the cause of any digestive dysfunction or of any disease.

(*x*) It stops gas or indigestion.

(*y*) It never fails to afford relief.

It is further agreed by S. Grover Graham Co., Inc., that in the dissemination of advertising by the means and in the manner above set out of a medicinal preparation now designated "Graham's Butternut Pills" 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:

(*z*) It is composed of a vegetable ingredient without disclosing that it contains only the extract from a vegetable.

(*aa*) It is a tonic or has tonic properties.

(*bb*) It is a remedy for any disease or dysfunction or will cure or correct constipation.

(*cc*) It is a remedy for habitual constipation, headache, biliousness, coated tongue, foul breath, malaria, and all disorders arising from inactivity of liver or torpidity of bowels.

(*dd*) It has any strengthening effect upon the muscular action of the intestines; and

(*ee*) It prevents the return of constipation or has any permanent effects.

The said S. Grover Graham Co., Inc., further agreed to cease and desist from using the word remedy or any similar word or words as a part of the trade name of its product Grover Graham Remedy or in any other manner so as to import or imply that said product is anything more than a treatment to neutralize temporarily excessive gastric acidity and to relieve temporarily the pain caused thereby.

The said S. Grover Graham Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 14, 1941.)

02782. **Cosmetic Preparations—Qualities, Properties, or Results, Comparative Merits, Competitive Products, Source or Origin, Etc.**—Donna Lo Laboratories, Inc., a corporation, 603 Del Monte Way, St. Louis, Mo., vendor-advertiser, was engaged in selling a line of cosmetic preparations designated as "Donna Lo Scientific Beauty Preparations," which line includes, or has in the past included, preparations designated "Donna Lo Facial Oil," "Donna Tone Lotion," "Donna Lo Circulation Emulsion," "Donna Lo Finishing Emulsion," "Donna Lo Face Powder," and "Donna Lo Cleansing Emulsion" and, agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That Donna Lo preparations, or any one of the same provide a new kind of skin care or are effective as an aid in correcting skin ailments generally, or that said preparations, or any one of said preparations, normalize the skin or are of any value as an aid in correcting wrinkles, lines, dry and oily skin, sallow and lifeless skin, abnormal lines, crepe necks, double chins, pockets under the eyes, obstipated pores, blackheads, whiteheads, pimples, or acne.

2. That Donna Lo preparations permit the skin or the pores of the skin to breathe.

3. By the use of the word "Circulation" in the brand name of its preparations designated "Circulation Emulsion" or in any other manner that said preparation stimulates circulation.

4. In any manner that said preparations, or any one of them, causes the blood stream to circulate through inactive areas of the face, or aid in the removal of foreign substances lodged in the pores of the skin.

5. That Donna Lo preparations, or any one of said preparations, decrease the size of the pores.

6. That massage breaks down the tissues of the skin.

7. That the use of soap causes the face to break into lines.

8. That astringent cosmetic preparations harden or dry the skin.

9. That ground glass or impure substances are commonly used by its competitors in the manufacture of face powders, or that face powders sold by its competitors contain ingredients which close or seal the pores of the skin.

10. That any arrangements whatsoever have been made by it which enable purchasers to receive treatments without cost.

11. That Donna Lo Face Powder is made in France or is made from French formula, or in any other manner, that said powder is of foreign origin.

The said Donna Lo Laboratories, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 15, 1941.)

02783. **Cosmetic—History, Comparative Merits, Composition, Indorsements or Approval, and Qualities, Properties, or Results.**—Coryell, Inc., a corporation, F. Orlo Johnson, an individual, and E. B. Masters, an individual, 7392 Churchill, Detroit, Mich., vendor-advertisers, were engaged in selling a product designated "No-Hair," a cosmetic, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Nu-Hair is a professional secret of a scalp specialist.

(*b*) That it is a scientific or revolutionary hair or scalp or skin preparation.

(*c*) That it is superior to or different from other pomades, or that it contains ingredients that are essential for the hair, skin, or scalp.

(*d*) That it is the world's finest hair dressing or the finest hair dressing money can buy.

(*e*) That it is recommended by leading beauty shops or has aided thousands or any other number of persons to acquire fine heads of hair.

(*f*) That it will prevent, remove, relieve, alleviate, or combat baldness, dry or itchy scalps, or other hair or scalp ailments, or eradicate the evils of scalp neglect; or is absorbed by the scalp or hair or reaches hair roots.

(*g*) That it will conserve or restore the natural oils secreted by the scalp or control or help control or influence the glandular activity of the scalp, or that it will attack the causes of scalp disability or insure against scalp disability, or stimulate the nerve or blood supply of the scalp.

(*h*) That it will grow hair or help grow hair or is of any value for the falling or loss of hair or will replace falling hair, vitalize or invigorate or insure the preservation of hair, or impart new life to hair or stop hair from splitting or breaking at ends or change the hair lines of the hair.

(*i*) That it will clean, enliven, or nourish inactive hair follicles.

It is further agreed by Coryell, Inc., F. Orlo Johnson, and E. B. Masters that in connection with the dissemination of advertising by the means and in the manner above set out they will forthwith cease and desist from using the brand name "Nu-Hair" in such a way as to imply or infer that "Nu-Hair" will grow or produce hair.

The said Coryell, Inc., F. Orlo Johnson, and E. B. Masters further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 15, 1941.)

02784. **Medicinal Preparation—Qualities, Properties, or Results.**—Frank D. Seiple, an individual operating under the trade name of The Nolan Co., 311 Main St., Greenville, Pa., vendor-advertiser, was engaged in selling a medicinal preparation designated "Slumber Ointment" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Slumber Ointment is a competent treatment for ringworm in all cases, or in any cases excepting those involving a superficial ringworm infection.

(*b*) That Slumber Ointment is a competent treatment for athlete's foot unless expressly limited to the superficial organisms thereof and the relief of itching associated therewith.

(*c*) That this product is of any value in the treatment of eczema, salt rheum, grease and rubber poisoning, skin diseases, or poisoning beyond that of temporary relief for the itching which may accompany these conditions.

(*d*) That Slumber Ointment is a competent treatment for the itch or scabies.

(*e*) That this preparation is a competent treatment for burns generally, or is of any value in the treatment of burns unless expressly limited to minor burns, or that it will cause burns to heal without a scar, or that the product is healing.

(*f*) That such a product is a competent treatment or an effective remedy for varicose ulcers, warts, ingrown toe nails, boils, blackheads, pimples, acne, piles, dandruff, or for scaly or itchy scalp.

(*g*) That it is a competent treatment for any form of baldness or that it will grow hair.

The said Frank D. Seiple further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 18, 1941.)

02785. **Hair Preparation—Qualities, Properties, or Results, Professional Approval, Tests, and Government Conformance.**—Belem Products Co., a corporation, 1009 Isabella Ave., Houston, Tex., vendor-advertiser, was engaged in selling a hair preparation designated "Locao Belem" 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 remedy or cure for baldness, falling hair, aggravated conditions of the scalp, dandruff, itching or irritated scalp, or oily hair or scalp.

(*b*) That Locao Belem will grow hair.

(*c*) That Locao Belem rejuvenates the scalp, stimulates or revitalizes the hair cells, adds new life to hair, corrects soft or fine hair which is difficult to wave or set, promotes activity in the oil glands, or is prescribed by physicians for hair or scalp.

(*d*) That Locao Belem has been subjected to laboratory tests by the Food and Drug Administration.

(*e*) That Locao Belem, upon analysis by the Food and Drug Administration, was found to comply with the "Pure Food and Drugs Law."

The said Belem Products Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 22, 1941.)

02786. **Drug Preparation—Qualities, Properties, or Results.**—Benjamin Ingber, an individual trading as Leonard Sales Co., 237 North Ninth Street, Philadelphia, Pa., vendor-advertiser, was engaged in selling a drug preparation designated "Corn-Go" 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 instantly stop the pain of corns or calluses.

(*b*) That said preparation will prevent the recurrence of corns or calluses.

(*c*) That said preparation will remove or has any value in the treatment of bunions.

The said Benjamin Ingber further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Apr. 23, 1941.)

02787. **Medicinal Preparation—Qualities, Properties, or Results, and Safety.**—Chelf Chemical Co., a corporation, 118 South Seventeenth St., Richmond, Va., vendor-advertiser, was engaged in selling a medicinal preparation in granular form containing, among other ingredients, potassium bromide and acetanilid, designated "Chelf's C. C. Comp'd.," also "C. C. C. C." and "4 C's," which it has recommended for use by persons suffering from headaches, colds, neuralgic and muscular pains, nervousness, and other symptoms and conditions, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That this preparation—

(*a*) Will remove the cause of headaches, indigestion, or nervousness, will remedy these conditions or disturbances, or will restore one to normal.

(*b*) May be safely used by all persons under all conditions and will not have a depressing effect upon the heart.

(*c*) Will prevent colds.

(*d*) Will relieve colds generally or head colds, unless limited to the palliative relief of aches and pains accompanying such colds.

(*e*) Will give "instant" relief or relief in any specified period of time, from headaches, and neuralgic and muscular pains, or can always be depended upon.

(*f*) Will relieve nervousness, restlessness, or fidgety, grouchy, tired, worn-out or mentally fatigued persons, except to the extent to which it may relieve pain and act as a sedative for simple nervousness.

The said Chelf Chemical Co. further agreed, in connection with the advertising by the means and in the manner above set out, to cease and desist from disseminating any advertisements for the said preparation which fail to reveal that the said preparation should not be used in excess of the dosage recommended; that frequent and continued use thereof may be dangerous, causing serious blood disturbances, anemia, collapse, or dependence on acetanilid; and that its frequent or continued use may lead to mental derangement, skin eruptions, or other serious effects; that it should neither be taken by or administered to children nor taken by or administered to those persons who suffer from kidney disease: *Provided, however*, That such advertisements need contain only a statement that the said preparation should be used only as directed on the label thereof, if and when such label either contains a caution or warning to the same effect or specifically directs attention to a similar caution or warning statement in the accompanying labeling.

The said Chelf Chemical Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 24, 1941.)

02788. **Cleaning Compound—Special or Limited Offer, History, Unique, Comparative Merits, Qualities, and Guaranteed.**—Kleenmaster Corp., a corporation, Citizens Bank Building, Wilmington, Del., Vendor-advertiser, was engaged in selling a cleaning compound designated "Kleenmaster Concentrate" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That any offer is special, or for a limited time, or requires prompt action for acceptance, unless the offer expires at a definite, predetermined time, after which acceptances of such offer are rejected and at which time the offer is in fact terminated.

(*b*) That Kleenmaster utilizes a new or different method, or that it is the only product cleaning by means of a shampoo method, or that it has no competition; or that it is a discovery or one which will revolutionize cleaning or renovating.

(*c*) That Kleenmaster removes stains or spots of all kinds, or that it removes ink stains specifically.

(*d*) That Kleenmaster is 25 times or any other number of times as concentrated or goes 25 times or any other number of times as far as other products offered for the same general purpose and use.

(*e*) That Kleenmaster is unconditionally guaranteed.

The said Kleenmaster Corp. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 29, 1941.)

02789. **Device for Skin Beautification—Qualities, Properties, or Results, and Nature.**—Kelso Norman and Louis L. Layne, copartners, operating under the firm name of Kelso Norman Organization, Central Tower, San Francisco, Calif., were engaged in the business of conducting an advertising agency which disseminated advertisements for a device designated "Deep-Skin Electro-Mask" in behalf of Inspire, Inc., San Francisco, Calif., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That this device will normalize the skin.

(*b*) That the device is a remedy for wrinkles, crow's-feet, lines, or enlarged pores.

(*c*) That this product accomplishes all the benefits of the most extravagant salon facial.

Kelso Norman and Louis L. Layne further agreed to cease and desist from the use of the words "Deep Skin" as a part of the brand name for this product, or from representing in any manner, directly or indirectly, that the effect of this device extends deeply into the skin, or is more than a surface application, or that it has any effect directly upon the dermis, or that it acts from the inside outward. (Apr. 29, 1941.)

02790. **Breakfast Cereals—Qualities, Properties, or Results, Composition, and Comparative Merits.**—The Battle Creek Food Co., a corporation, Battle Creek, Mich., vendor-advertiser, was engaged in selling certain breakfast cereals designated "Zo" and "Fig Bran" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Fig Bran, through its effect on constipation, will relieve any definite percentage of complaints.

(*b*) That Fig Bran, is rich in Vitamins A, D, or E, when such is not the fact.

(*c*) That Zo corrects the defects of other foods.

(*d*) That Zo contains all the elements needed to meet all the energy demands and other nutrient needs of the body.

(*e*) That Zo contains milk.

(*f*) That competitive breakfast foods are usually lacking in the bone building elements.

The Battle Creek Food Co. further agreed not to publish or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (May 1, 1941.)

02791. **Laxative Preparation—Safety.**—Benson & Dall, Inc., a corporation, 327 South LaSalle St., Chicago, Ill., was engaged in the business of conducting an advertising agency which disseminated advertisements for a laxative preparation designated "Stuart's Laxative Compound Tablets" on behalf of the F. A. Stuart Co. of Marshall, Mich. and agreed, in connection with the dissemination of future advertis-

ing, to cease and desist from representing directly or by implication that said preparation will in no case have any deleterious effects or is safe to use in all cases, or which fails to reveal—

(*a*) That the use of said preparation should be discontinued where a skin rash appears.

(*b*) That said preparation should not be used when abdominal pains (stomach ache, cramps, colic), nausea, vomiting (stomach sickness), or other symptoms of appendicitis are present, and

(*c*) That frequent or continued use of said preparation may result in dependence on laxatives.

Provided, however, That such advertisement need contain only a statement that the preparation should be used only as directed on the label thereof if and when such label contains either cautioning or warning statements to the same effect as (*a*), (*b*), and (*c*) above, or specifically directs attention to similar warning statements in the accompanying labeling.

The said Benson & Dall, Inc., further agreed not to disseminate or cause to be disseminated any testimonial contrary to the foregoing agreement. (May 8, 1941.)

02792. **Food, Drug and Cosmetic Products—Qualities, Properties, or Results, Composition, and Manufacturer.**—Ruth Clark, an individual trading as Ruth Clark's Products, 430 South Broadway, Los Angeles, Calif., vendor-advertiser, was engaged in selling certain food, drug, and cosmetic products designated "Re-Chemicalizing Bouillon," "Blendavita Tea," "Vitamin 'A' Concentrate," "Oils of Youth," "Vit-A-Pac," "Vitamin 'A' Beauty Cream," and "Vit-A-Hair and Scalp Oil," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said product is of any value or effect in the relief, treatment or correction of arthritis, neuritis, colds, nervousness, or skin troubles.

(*b*) That said product is of any value or effect of itself or when combined with the product Blendavita Tea as a reducing aid or in the correction, treatment, or relief of an overweight condition.

(*c*) That said product possesses any value in the relief, treatment or correction of anemia or any underweight condition in excess of such benefits as may accrue from the food elements contained therein.

(*d*) That said product has a beneficial effect upon the blood stream or will aid in renewing the blood cells, muscles, bone tissues, or renew and rebuild the entire body structure or have any other effect in excess of such benefits as may accrue from the food elements of the product.

(*e*) That said product will in any way or manner quicken or speed up the natural process of renewing or rebuilding the body structure or any part thereof.

(*f*) That by the use of the word "Re-Chemicalizing" in the brand name or by any other means or words of similar import that the said product will re-chemicalize the system.

(*g*) That said product will remineralize the system or has any substantial value in supplying minerals thereto.

It is also agreed by Ruth Clark that in the dissemination of advertising by the means or in the manner hereinbefore set out of products designated Blendavita Tea, Oils of Youth, Vitamin "A" Concentrate, or any other products of substantially the same composition or possessing substantially the same properties, whether sold under the aforementioned names or by any other names, she will forthwith cease and desist from representing, directly or by implication:

(*a*) That the product Blendavita Tea has any value or effect whatsoever in the relief or treatment of troubles or ailments of the kidneys, bladder, and skin.

(*b*) That the product Blendavita Tea aids digestion, corrects or is an aid in the relief of insomnia, or acts as an alkalizing agent.

(*c*) That Blendavita Tea is of value of itself or when combined with the product Re-Chemicalizing Bouillon or any other product of substantially the same composition or properties, as a reducing aid or in the correction, treatment, or relief of an overweight condition.

(*d*) That the product Blendavita Tea is of value when combined with the product Re-Chemicalizing Bouillon or any other product of substantially the same composition or properties in the relief, treatment, or correction of arthritis, or neuritis.

(*e*) That the product Blendavita Tea is of value when combined with the product Re-Chemicalizing Bouillon or any other product of substantially the same composition or properties in the relief, treatment, or correction of an underweight condition in excess of such benefits as may accrue from the food elements contained in the combined products.

(*f*) That the product Oils of Youth will lubricate, or keep the body internally clean and free from sluggishness.

(*g*) That the product Oils of Youth is of value in the treatment of constipation or its symptoms.

(*h*) That the product Vitamin "A" Concentrate would be of value to those suffering from frequent colds, sinus trouble or skin infections unless claims therefor reveal that the product would be of value only if the individual was suffering from a deficiency of Vitamin A.

(*i*) That the product Vitamin "A" Concentrate would relieve or have any effect on eyestrain.

(*j*) That the product Vitamin "A" Concentrate would relieve or have any effect on ulcers, unless such claims are limited to corneal ulcers resulting from specific deficiency in Vitamin A.

(*k*) That the product Vitamin "A" Concentrate will feed or nurse the eyes or renew tissues.

It is further agreed by Ruth Clark that in the dissemination of advertising by the means or in the manner hereinabove set out of the products now designated "Vit-A-Pac," "Vitamin 'A' Beauty Cream," "Vit-A-Hair and Scalp Oil," or any other products of substantially

the same composition or possessing substantially the same properties, she will forthwith cease and desist from representing, directly or by implication:

(*a*) That the product Vit-A-Pac has a neutralizing effect on the acids in the tissues and on the surface of the skin.

(*b*) That the product Vit-A-Pac possesses any value as a skin tonic or facial pack because of its Vitamin A content.

(*c*) That the product Vitamin "A" Beauty Cream, because of its vitamin content or otherwise, will revitalize the skin.

(*d*) That the product Vitamin "A" Beauty Cream, because of its vitamin content, is of any value or benefit to the skin or tissues.

(*e*) That the product Vitamin "A" Beauty Cream feeds the tissues.

(*f*) That the product Vit-A-Hair and Scalp Oil is made of rare oils or is rich in minerals.

(*g*) That the product Vit-A-Hair and Scalp Oil is rich in vitamins unless such claims are limited to the Vitamin A content.

(*h*) That the product Vit-A-Hair and Scalp Oil because of its vitamin content is of any value or benefit to the hair or scalp.

(*i*) That the product Vit-A-Hair and Scalp Oil possesses penetrating properties.

The said Ruth Clark further agreed to cease and desist from representing, directly or by implication, through the use of the abbreviation "Vit" or the word "Vitamin," in connection with the letter "A," in the brand name of her products, Vit-A-Pac, Vitamin "A" Beauty Cream, and Vit-A-Hair and Scalp Oil, that the Vitamin A content has any beneficial influence or effect upon the skin, hair, or scalp.

The said Ruth Clark further agreed that she will cease and desist from representing through the use of the word "manufacturer" in connection with the advertising of her various products:

That she manufactures or compounds all of such products:

The said Ruth Clark further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (May 8, 1941.)

02793. **Bird Foods—Qualities, Properties, or Results.**—Petpak Products Co., a corporation, 3264 North Thirty-third St., Milwaukee, Wis., vendor-advertiser, was engaged in selling bird foods designated "Petpak Conditioner," "Petpak Cod Liver Oil Egg Food," "Petpak Mating Food," "Petpak Marvel Song Restorer," "Petpak Vitamin Song Seed," "Petpak Special Baby Bird Food," "Petpak Song Food with Cod Liver Oil," "Petpak Moulting Food" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That use of Petpak Mating Food or any of its products will insure fertile eggs or strong, healthy fledglings, or that its products reduce bird mortality or produce stronger or healthier birds.

(*b*) That Petpak Special Baby Bird Food contains no filler, or that the potency of the vitamins in its products is preserved.

The said Petpak Products Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 9, 1941.)

02794. **Cigars—Composition, Source or Origin, and Price.**—H. Fendrich, Inc., a corporation, 101 Oakley St., Evansville, Ind., vendor-advertiser, was engaged in selling certain cigars designated "La Fendrich" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That La Fendrich cigars contain an "imported Havana-rich long filler" or from making any other representation referring to or designating the origin of the filler tobacco of these cigars unless in every such representation the country of origin of each of the filler tobaccos used in said cigars shall be set forth or stated in the order of their respective predominance by weight in letters of equal size and conspicuousness or with equal emphasis.

(*b*) That the price of this cigar was formerly ten cents and is now only five cents, or any other representation indicating a reduction in price unless in fact the price of the particular cigar referred to has recently been the price stated and the reduction in price has only recently become effective, or unless the date such reduction in price was made be set forth or stated immediately in conjunction with the former price and in letters of equal size and conspicuousness or with equal emphasis.

The said H. Fendrich, Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 5, 1941.)

02795. **Medicinal Preparation—Qualities, Properties, or Results, Composition, and Safety.**—R. V. Annen, an individual doing business under the trade name of General Vitamins Co., 565 West Washington Blvd., Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated "Vev," represented as a remedy for constipation and the symptoms of constipation 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 words "end" and "eliminate" or any other word or words of similar import or meaning that said preparation is a remedy for or will cure constipation or has any value in the treatment of constipation in excess of affording temporary relief from the symptoms thereof.

(*b*) That said preparation has any value for any symptom or condition in excess of affording temporary relief or benefit for such symptoms or conditions as are due to constipation.

(*c*) That said preparation is a vitamin laxative, or by any other terminology that vitamins are present in this product in an amount sufficient to accomplish any therapeutic or dietetic effect.

It is further agreed that R. V. Annen will cease and desist from disseminating any advertisements for its products which fail to reveal

that said product should not be used when abdominal pain, (stomach ache, cramps, colic) nausea, vomiting (stomach sickness), or other symptoms of appendicitis are present, and also, that frequent or continued use thereof may result in dependence on laxatives: *Provided, however*, That such advertisements need contain only a statement that the preparation should be used only as directed on the label thereof if and when such label either contains a caution or warning to the same effect or specifically directs attention to a similar caution or warning statement in the accompanying label.

The said R. V. Annen further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 14, 1941.)

02796. **Flavorings—Composition and Nature.**—Clyde Collins, Inc., a corporation, Front and McCall Sts., Memphis, Tenn., vendor-advertiser, was engaged in selling Vanilla, Lemon, Strawberry, Pineapple, and Banana flavorings designated "Vanilla Extract," "Lemon Extract," "Strawberry Extract," "Pineapple Extract," and "Banana Extract" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication: using the words "Lemon," "Strawberry," "Pineapple," or "Banana," in combination or in connection with the word "Extract" until or unless the products are composed of genuine ingredients, as distinguished from synthetic chemical substitutes, and such ingredients are suspended in ethyl alcohol; and, furthermore it will forthwith cease and desist from using the term "Vanilla Extract" to describe a flavoring product, unless it is prepared with a vehicle of ethyl alcohol and contains a flavoring content at least 50 percent of which consists of true vanilla made from the vanilla bean.

The said Clyde Collins, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 16, 1941.)

02797. **Electrical Devices for Electrically Charging Fences—Comparative Costs and Merits and Qualities, Properties, or Results.**—Montgomery Ward & Co., a corporation, 619 West Chicago Ave., Chicago, Ill., vendor-advertiser, was engaged in selling electrical devices for electrically charging fences, designated "Wards Supreme Electric Fence Controller" and "Wards Standard Electric Fence Controller" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the use of its electric fence controllers will effect any stated amount or percentage of saving in "farm fencing costs" as compared with the costs of other types of fences without stating the type or types of fence used as a basis for such comparison, and without taking into consideration in such comparison all costs including both initial costs and costs of maintenance.

(*b*) That all parts necessary for the construction of an electric fence cost two cents a rod or any other amount less than the actual cost of construction.

(*c*) That its electric fence controllers automatically adjust the voltage, amperage, or time interval of the electrical charge in a fence necessary for varying conditions of operation.

(*d*) That the use of its electric fence controllers is a positive, sure, or certain method to confine livestock or will prevent the escape of livestock under all conditions.

(*e*) That its electric fence controllers or fences require no attention, care, or maintenance service.

The said Montgomery Ward & Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 27, 1941.)

02798. **Radio Accessories—Prices, Etc.**—Herman Lubinsky, an individual trading as United Radio Co., 58 Market St., P. O. Drawer 1000, Newark, N. J., vendor-advertiser, was engaged in selling radio accessories and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) By any specified sum or in any other manner that the ordinary or regular price of any product was or is any amount in excess of the amount for which it was or is ordinarily and regularly sold.

(*b*) That the price of any article is a special price when it is the price for which the article is regularly and ordinarily sold.

(*c*) That any article cannot be purchased other than from him for less than any stated amount when such is not a fact.

The said Herman Lubinsky further agreed that when the former price of an article is quoted, he will with equal conspicuousness disclose the fact that such price was the price of the article before it became obsolete.

The said Herman Lubinsky agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 23, 1941.)

02799. **Articles for Feminine Wear—Composition and Domestic as Imported.**—Paul Rieger & Co., a corporation, trading as Dorothy Boyd Art Studio, 220–230 Commercial St., San Francisco, Calif., vendor-advertiser, was engaged in selling pajamas, kimonos and other articles for feminine wear and agreed, in connection with the dissemination of future advertising, to cease and desist from—

Using the words "silk," "silk crepe," "silk pongee," or "satin" alone or in combination with any other word or words of similar import or meaning to designate or describe any fabric or other product which is not composed wholly of silk, the product of the cocoon of the silkworm: *Provided, however,* That in the case of a fabric or product composed in part of silk and in part of other materials such words may be used as descriptive of the silk content if there is used in immediate connection or conjunction therewith in letters of at least equal

size and conspicuousness words truthfully describing and designating each constituent fiber or material thereof.

The said Paul Rieger & Co. further agreed to cease and desist from representing that it imports any article when such is not a fact.

The said Paul Rieger & Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 23, 1941.)

02800. **Poultry Food—Qualities, Properties, or Results, and Comparative Merits.**—John Shea Co., a corporation, trading as Shea Feed Stores, 53 Railroad St., Lawrence, Mass., vendor-advertiser, was engaged in selling a food product designated New England Economy Laying Mash and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the feeding of New England Economy Laying Mash to hens will cause the resulting eggs to be better tasting, larger, better shelled, or more uniform in color, than eggs produced if hens were fed other similar products.

(*b*) That the feeding of New England Economy Laying Mash will develop a proper gizzard or purify the entire system of the bird.

(*c*) That the New England Economy Laying Mash will produce high gear egg production at all times.

The said John Shea Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 27, 1941.)

02801. **Preparations for Treatment of Hair and Scalp—Qualities, Properties, or Results, and Comparative Merits.**—Lucky Tiger Manufacturing Co., a corporation, Sixth and Delaware Sts., Kansas City, Mo., vendor-advertiser, was engaged in selling certain preparations for the treatment of the hair and scalp designated Lucky Tiger and Lucky Tiger With Oil and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That either of said products is a competent remedy or removes the cause of dandruff or has any therapeutic value in the treatment thereof in excess of the temporary removal of loose dandruff scales.

(*b*) That either of said products will permanently stop itching of the scalp or end irritations of the scalp.

(*c*) That either of said products will permanently eliminate or end the desire to scratch the scalp.

(*d*) That Lucky Tiger removes the cause of or cures the condition known as dry hair.

(*e*) That Lucky Tiger With Oil removes the cause of or cures the condition known as dry hair or affects this condition other than by supplementing with oil to relieve such condition temporarily.

(*f*) That, as part of the treatment known as Sulpho-Olive Treatment or in any other manner, either of said products reduces or prevents the loss of the hair from the scalp or checks excessive falling hair.

(*g*) That, as part of said Sulpho-Olive Treatment or in any other manner, either of said products will eliminate, or end scalp diseases or scalp disorders; or

(*h*) That no competitive product will produce like results as Lucky Tiger or Lucky Tiger With Oil as a part of the said Sulpho-Olive Treatment, or in any other manner.

The said Lucky Tiger Manufacturing Co. further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (May 27, 1941.)

02802. **Hair and Scalp Preparations—Qualities, Properties, or Results, and Safety.**—Adolph R. Phillips and Daniel B. Scott, Jr., copartners, operating under the trade name of Adolph's Beauty Products Co., 330 North Fifty-fifth St., Philadelphia, Pa., vendor-advertiser, were engaged in selling an alleged treatment for the hair and scalp designated Formula-X, which consists of two medicinal preparations bearing the brand names Formula-X Liquid and Formula-X Pomade, respectively, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That it will cause hair to grow.

(*b*) That it is of value in the treatment of Dandruff in excess of loosening dandruff scales and temporarily relieving itching.

(*c*) That it is of value in the treatment of Eczema in excess of softening excessive epithelium and temporarily relieving itching.

(*d*) That it is of value in the treatment of falling or brittle hair.

The said Adolph R. Phillips and Daniel B. Scott, Jr., further agreed, in connection with the advertising by the means and in the manner above set out, to cease and desist from disseminating any advertisement for Formula-X Liquid, independently or as a component part of the treatment hereinbefore referred to as Formula-X, which fails to reveal that unless used in specified proper dilution, it would cause a marked local inflammation or, due to absorption, possible damage to the kidneys if used over a long period of time, or if a large surface were covered at any one time: *Provided, however*, That such advertisements need contain only a statement that the preparation should be used only as directed on the label thereof, if and when such label either contains a caution or warning to the same effect or specifically directs attention to a similar caution or warning statement in the accompanying labeling.

The said Adolph R. Phillips and Daniel B. Scott, Jr., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 29, 1941.)

02803. **Preparation for Treatment of Women's Hosiery, Lingerie, Etc.—Qualities, Properties, or Results, and Laboratory.**—Marvin W. Ray, an individual doing business under the trade name of Ray Products Co., Chamber of Commerce Building, 80 Federal St., Boston, Mass., vendor-advertiser, was engaged in selling a preparation for the treatment of women's hosiery, lingerie, and other garments, designated "Marv-Ray" and agreed, in connection with the dissemination of future advertising to cease and desist from representing directly or by implication:

(*a*) Marv-Ray is a mysterious new preparation or a new discovery.

(*b*) That Marv-Ray stops runs in women's hosiery or banishes forever the fear that hosiery will run.

(*c*) That Marv-Ray makes hosiery more elastic, splashproof, or fadeproof.

(*d*) That one treatment of Marv-Ray lasts the lifetime of the hose.

The said Marvin W. Ray further agreed to cease and desist from representing in any manner or by any means that he owns and operates or controls a laboratory.

The said Marvin W. Ray agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 29, 1941.)

02806.[1] **Coal Tar Hair Dye Product—Safety.**—Tintz Co., a corporation, 207 North Michigan Ave., Chicago, Ill., vendor-advertiser, was engaged in selling a certain coal tar hair dye product designated "Tintz Creme Shampoo Hair Coloring" and agreed to cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness,

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label,"

if and when such label bears the first-described caution conspicuously displayed thereon, and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

02807. **Coal Tar Hair Dye Product—Safety.**—G. B. Brandt, an individual trading as Zephyr Laboratories. 4358 North Kenmore Ave., Chicago, Ill., vendor-advertiser, was engaged in selling a certain coal tar hair dye product designated "Brandt's Olive Oil Shampoo Tint"

[1] Stipulations 02804 and 02805 were not accepted until after May 31, 1941, and are consequently not included at this point but are published in the ensuing volume.

and agreed to cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label,"

if and when such label bears the first-described caution conspicuously displayed thereon, and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

02808. **Coal Tar Hair Dye Product—Safety.**—American Beauty Products Co., a corporation, 2226 North Racine Ave., Chicago, Ill., vendor-advertiser, was engaged in selling a certain coal tar hair dye product designated "Brandt's Olive Oil Shampoo Tint" and agreed to cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label,"

if and when such label bears the first-described caution conspicuously displayed thereon, and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

02809. **Coal Tar Hair Dye Product—Safety.**—H. L. Baum, an individual trading as Beauty Products, 1625 Court Place, Denver, Colo., vendor-advertiser, was engaged in selling a certain coal tar hair dye product designated "Noreen Super Color Rinse" and agreed to cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label,"

if and when such label bears the first-described caution conspicuously displayed thereon, and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

02810. **Coal Tar Hair Dye Products—Safety.**—Clairol, Inc., a corporation, Stamford, Conn., vendor-advertiser, was engaged in selling certain coal tar hair dye products designated "Special Clairol" and "Instant Clairol" and agreed to cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals, and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label."

if and when such label bears the first-described caution conspicuously displayed thereon, and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

02811. **Coal Tar Hair Dye Products—Safety.**—Bes-Tone, Ltd., a corporation, 468 Fourth Ave., New York, N. Y., vendor-advertiser, was engaged in selling certain coal tar hair dye products designated "Bes-Tone" and "Bes-Tonol Oil Shampoo Tint" and agreed to cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals, and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label."

if and when such label bears the first-described caution conspicuously displayed thereon, and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

02812. **Coal Tar Hair Dye Product—Safety.**—Nu-Gloss Manufacturing Co., Inc., a corporation, 826 Broadway, New York, N. Y., vendor-advertiser, was engaged in selling a certain coal tar hair dye product

designated "Nu-Gloss Tintrinse" and agreed to cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

CAUTION.—This product contains ingredients which may cause skin irritation on certain individuals, and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.

Provided, however, That such advertisement need contain only the statement:

"CAUTION.—Use only as directed on label."

if and when such label bears the first-described caution conspicuously displayed thereon, and the accompanying labeling bears adequate directions for such preliminary testing before each application. (May 21, 1941.)

DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION[1]

THOMAS v. FEDERAL TRADE COMMISSION[2]

No. 2093

(Circuit Court of Appeals, Tenth Circuit. Dec. 14, 1940)

COMMISSION POWERS AND DUTIES—IN GENERAL.

The Federal Trade Commission is empowered to prevent use of unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce. (Federal Trade Commission Act, sec. 5 as amended, 15 U. S. C. A., sec. 45.)

PUBLIC INTEREST—SECTION 5 PROCEEDINGS—PRESUMPTION OF, AS PREREQUISITE.

A proceeding by the Federal Trade Commission to prevent the use of unfair methods or unfair or deceptive acts or practices in commerce must appear to be in the interest of the public.

PUBLIC INTEREST—SECTION 5 PROCEEDINGS—METHODS, ACTS AND PRACTICES—PRICE MISREPRESENTATIONS—REGULAR PRICES AS SPECIAL OR INTRODUCTORY.

Where feather quilt manufacturer represented that price of $18.75 was special or introductory price which was one-half of regular price but few if any sales were made at regular price and manufacturer's representations resulted in drawing customers to him and away from sellers of other quilts with whom he was in competition, the manufacturer was guilty of "unfair methods of competition in commerce" and "unfair and deceptive acts and practices in commerce" so that cease and desist order of Federal Trade Commission was justified on ground that the proceeding by the Commission was in interest of the public.

(The syllabus, with substituted captions, is taken from 116 F. (2d) 347)

On petition to review order of Commission, order affirmed and enforced.

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[1] During the period covered by this volume, namely, Dec. 1, 1940, to May 31, 1941, the United States Supreme Court denied certiorari in *General Motors Corp. et al.* v. *F. T. C.*, January 20, 1941, 312 U. S. 682, 61 S. Ct. 550; and in *California Lumbermen's Council et al.* v. *F. T. C.*, March 31, 1941, 312 U. S. 709, 61 S. Ct. 827.

Decisions of the Circuit Courts of Appeals in the foregoing cases are respectively reported as follows, namely, *General Motors Corp. et al.*, 114 F. (2d) 33, 31 F. T. C. 1852; and *California Lumbermen's Council et al.*, 115 F. (2d) 178, 31 F. T. C. 1870.

[2] Reported in 116 F. (2d) 347. For case before Commission, *see* 30 F. T. C. 510.

Mr. Charles H. Haines, of Denver, Colo. (*Mr. J. Frederick Schneider*, of Denver, Colo., on the brief), for petitioner.

Mr. James W. Nichol, of Washington, D. C., special attorney, Federal Trade Commission (*Mr. W. T. Kelley*, chief counsel, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. Carrel F. Rhodes*, special attorney, Federal Trade Commission, all of Washington, D. C., on the brief), for the Commission.

Before PHILLIPS, HUXMAN, and MURRAH, Circuit Judges.

PHILLIPS, *Circuit Judge:*

This is a petition to review an order of the Federal Trade Commission.

Chester L. Thomas, doing business under the trade name, Thomas Quilt Factories, is engaged in the manufacture of feather quilts at Denver, Colorado. The business was established in July 1923. At the time of the hearing before the trial examiner in September 1938, the factory was operating one seven-hour shift and one five and one-half hour shift per day and was producing 200 quilts per day. About 80 people are employed in the factory, 12 in the office, 25 in the advertising department, and 150 as field agents. Thomas sells directly to the retail purchaser. His agents are supervised by district managers and zone managers. Up to 1930, his sales were confined principally to the state of Colorado. In 1930, he adopted a new selling method, the details of which are substantially as follows: A list of prospective purchasers in a particular community is made up from telephone and city directories, to whom circulars are sent. The circular represents that the Thomas Feather quilt is the warmest quilt known to mankind and advertises a sale at one-half price for five days only. It contains the following, "If interested, return this card at once for full details of this wonderful one-half price sale. No postage needed—Just mail it now!" After the preliminary circularization, Thomas causes an advertisement of the sale to be inserted in a local newpaper in the community in which the sale is to be held. Typical of these advertisements was one entitled, "Limited Half Price offer on genuine Thomas Feather-Quilts," and which contained the following statements:

"During the next 5 days you and other quality minded residents of this city may reserve the right to purchase two genuine [348] Thomas Feather-Quilts for the usual price of one!

"The 'World's Warmest Quilt,' recently designed by the nation's foremost sleep specialists, allows you to enjoy a new kind of health-giving, 'Re-Vitalizing' sleep. * * *"

Attached to the advertisement is a coupon to be mailed to Thomas Quilt Factories, Denver, Colorado. After the advertising campaign

has been carried on in a community, agents go there and solicit orders for quilts at $18.75. When an agent obtains an order he collects part of the purchase price, remits it with the order, and the quilt is shipped with instructions to the carrier to collect the balance of the purchase price on delivery. A sale in a given community lasts from five to eleven days but averages about five days. In the foregoing manner sales have been conducted in various communities in nearly all the states of the United States. It is the policy of Thomas to repeat these sales in each of the selected communities once each year. If an offer to purchase is received after the sale has terminated, a form letter is sent out stating that the special price is no longer in effect and quoting the quilt at $37.50. But, in the same letter, factory irregulars are quoted at $20.00 for one, or two for $37.50, and it is stated that "Except for a few barely noticeable imperfections in material or workmanship, these quilts are identical in every way to our first quality" quilts, and "you may now take advantage of a $17.50 discount on each of these beautiful Thomas Feather-Quilts."

Millions of pieces of direct mail literature advertising such sales have been sent out by Thomas. During the period from 1930 to the time of the hearing in September, 1938, in excess of 95 per cent of the sales made by Thomas were through the special sale method. His sales in 1937 were approximately $500,000. He estimated that they would run nearly $1,000,000 in 1938. There was no proof that any quilt had ever been sold at $37.50. In answer to the question, "Have you ever received $37.50 for one of your quilts," Thomas testified, "It has been the factory policy for several years last past to quote and charge any purchasers direct from the factory the regular retail price of $37.50."

The quilts were filled with chicken feathers. There was proof that salesmen frequently represented them to contain goose and wild duck feathers. Where a purchaser complained that the quilts contained chicken feathers, it was the practice of Thomas to offer an adjustment of $5.00 per quilt. Thomas claimed that through a special process, he was able to produce a superior quilt with chicken feathers.

In its complaint the Commission alleged that Thomas sold his products in competition with other individuals, partnerships, and corporations, and engaged in the business of selling and distributing quilts and other similar products in interstate commerce. This allegation was expressly admitted in the answer.

The evidence established that Thomas competes with all kinds of bed covering, but principally with the better grade of down quilts. Down quilts are filled with the feathers of any aquatic bird. They

have been on the market for many years and have a reputation of being excellent bedding material.

Many persons who purchased Thomas quilts filed complaints with Better Business Bureaus.

Thomas continued to use the selling method above described up to the hearing before the examiner.

The Commission found that the price of $18.75 is not a reduced price or a special or introductory price, but is the customary price at which the quilts are sold by Thomas in the regular course of business at all times, and that the statement that the price of $18.75 was one-half the regular price was false and misleading and calculated to, and did, mislead and deceive a substantial portion of the purchasing public, and that as a result, the consuming public has purchased a substantial volume of Thomas quilts and trade has been diverted unfairly to Thomas from competitors. It ordered that Thomas cease and desist from

"1. Representing as the customary or regular prices or values of quilts or other bed covering prices and values which are in excess of the prices at which such products are regularly and customarily sold by respondent in the normal and usual course of business;

"2. Representing that the prices at which respondent offers for sale and sells his products constitute a discount to the purchaser, or that such prices are special or reduced, or introductory prices, or that such prices are applicable for a limited time only, when in fact such prices are the [349] usual and customary prices at which respondent sells such products in the normal and usual course of business."

Counsel for Thomas assert that the evidence does not support the findings of the Commission, and does not warrant the Commission's order.

The authority of the Commission to issue the order is derived from § 5 of the Federal Trade Commission Act, 38 Stat. 717, 719–720, as amended by the Act of March 21, 1938, 52 Stat. 111, 15 U. S. C. A. § 45.

By the statute the Commission is empowered and directed to prevent persons, partnerships, or corporations, with certain exceptions not here material, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

Under the original act, unfair methods of competition in commerce were declared unlawful. By the amendment, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are declared unlawful.

A proceeding by the Commission to prevent the use of the unfair methods or unfair or deceptive acts or practices in commerce must appear to be in the interest of the public. *Federal Trade Commission* v. *Raladam Company*, 283 U. S. 643, 646.

During the period from 1930 to and including September 1938, practically all, if not all, the sales made by Thomas were effected by the special method first adopted in 1930, and few, if any, sales were made at the so-called factory price of $37.50. The method was not limited to one special sale in a community, but sales were repeated at intervals of about one year in each community. It is true that when a customer undertook to purchase a quilt from the factory, the price of $37.50 was quoted, but along with that quotation was an offer to sell factory irregulars represented to be equal to first quality quilts, except for barely noticeable imperfections, and the statement was made "You may now take advantage of a $17.50 discount on each of these beautiful Thomas Feather-Quilts," and when Thomas was asked if he had ever sold a quilt for $37.50, he gave an evasive answer. It follows, we think, that the price of $18.75 was not a special or introductory price, nor a half price, but the regular price at which Thomas usually sold his quilts.

That many purchasers were misled and deceived into believing that the quilts were being offered at one-half the regular price, and were thereby induced to purchase, cannot be doubted. The representation that an article is offered at one-half the regular price is a potent factor in effecting sales. Undoubtedly, it resulted in drawing customers to Thomas and away from sellers of down quilts, with whom he was admittedly in competition.[1]

No doubt, a substantial portion of the public was misled by the circulars and other advertising matter and it follows that the public had an interest in stopping the practice as wrongful.[2]

Counsel for Thomas rely upon *John C. Winston Co.* v. *Federal Trade Commission*, 3 Cir., 3 F. (2d) 961, and *Chicago Portrait Co.* v. *Federal Trade Commission*, 7 Cir., 4 F. (2d) 759. These cases arose before the 1938 amendment to the Federal Trade Commission Act. In the former, the complaint was based upon alleged deceptive acts or practices and the court found that there was no deception, and hence, no unfair competition. In the latter case, the court held that the practice had no tendency to injure any competitor. For these reasons, they are clearly distinguishable from the instant case.

We conclude that Thomas was guilty of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce and that the proceeding by the Commission was in the interest of the public.

Let a decree be entered *affirming* and *enforcing* the order.

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[1] See *Brown Fence & Wire Co.* v. *Federal Trade Commission*, 6 Cir., 64 F. (2d) 934, 936; *International Art Co.* v. *Federal Trade Commission*, 7 Cir., 109 F. (2d) 393, 397.

[2] *Consolidated Book Publishers* v. *Federal Trade Commission*, 7 Cir., 53 F. (2d) 942, 945; *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483, 494.

GIMBEL BROS., INC. v. FEDERAL TRADE COMMISSION[1]

No. 72

(Circuit Court of Appeals, Second Circuit. Jan. 6, 1941)

"METHOD OF COMPETITION"—ADVERTISING SOLICITATION AS.

Soliciting the purchase of goods by advertisement is "method of competion" within Federal Trade Commission Act prohibiting unfair methods of competition in commerce. (Federal Trade Commission Act of 1914, sec. 5, 15 U. S. C. A. sec. 45.)

"UNFAIR METHOD OF COMPETITION"—ADVERTISING FALSELY OR MISLEADINGLY.

An advertisement soliciting purchase of goods is "unfair method of competion" within Federal Trade Commission Act prohibiting unfair methods of competition in commerce, where advertisement contains false representations.

FEDERAL TRADE COMMISSION ACT—SECTION 5—SCOPE AND PURPOSE—PROTECTION OF PUBLIC, AND NOT WRONGDOERS' PUNISHMENT, AS.

The purpose of Federal Trade Commission Act prohibiting unfair methods of competition in commerce is protection of public and not punishment of wrongdoer.

PUBLIC INTEREST—SECTION 5 PROCEEDINGS—METHODS, ACTS AND PRACTICES—SALE BY FALSE AND MISLEADING REPRESENTATIONS, GENERALLY—INTENT TO DECEIVE—AS NOT PREREQUISITE "UNFAIR METHOD".

The prevention of sale of commodities by false and misleading statements is in public interest, and hence deliberate effort to deceive is not necessary to make out a case of using "unfair methods of competition" within prohibition of Federal Trade Commission Act.

UNFAIR METHODS OF COMPETITION—ADVERTISING FALSELY OR MISLEADINGLY—DEPARTMENT STORE'S OFFER, TWICE, AS "WOOLENS", OF MIXTURES OF WOOL AND OTHER MATERIALS—KNOWLEDGE OF ADVERTISER—MATERIALITY.

A retail department store's advertisement which was published twice on different dates, and which solicited numerous readers to make individual purchases of small portions of more than 7,000 yards of goods which were mixtures of wool and other materials and were incorrectly described in advertisement as "woolens", was not a single instance of unintentional misrepresentation, and hence advertisement was "unfair method of competition," within Federal Trade Commission Act, notwithstanding that store may not have known that goods were composed only partly of wool.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—ORDER'S SCOPE—AS EXCEEDING ISSUE TENDERED BY COMPLAINT—ADVERTISING FALSELY OR MISLEADINGLY—"WOOLEN" DESIGNATION OF FABRICS COMPOSED ONLY PARTLY THEREOF—WHERE PROHIBITION OF WORD UNLESS DESIGNATION ALSO OF EACH CONSTITUENT FIBER IN ORDER OF PREDOMINANCE BY WEIGHT, ETC.

[1] Reported in 116 F. (2d) 578. For case before Commission, see 30 F. T. C. 328.

The Federal Trade Commission's cease and desist order prohibiting retail department store from using word "woolen" in advertisements to designate fabrics not composed wholly of wool, and requiring that such fabrics be designated by words describing each constituent fabric in order of predominance by weight, or percentage of fiber not present in a substantial amount by weight, went beyond issues raised by petition merely charging that store represented mixed goods as all wool, and would be modified so as to require store to describe mixed goods merely by words designating each constituent fiber thereof.

(The syllabus, with substituted captions, is taken from 116 F. (2d) 578)

On petition to review order of Commission, order affirmed as modified.

Chadbourne, Wallace, Parke & Whiteside, of New York City (*Mr. Horace G. Hitchcock* and *Mr. Walter T. Southworth*, both of New York City, of counsel), for petitioner.

Mr. W. T. Kelley, chief counsel, *Mr. Martin A. Morrison*, assistant chief counsel, *Mr. Merle P. Lyon* and *Mr. James W. Nichol*, special attorneys, Federal Trade Commission, all of Washington, D. C., for the Commission.

Before SWAN, AUGUSTUS N. HAND, and CLARK, Circuit Judges.

SWAN, *Circuit Judge:*

This case comes before the court upon the petition of Gimbel Brothers, Inc., which asks us to review and set aside an order of the Federal Trade Commission directing the petitioner to cease and desist from using the word "wool" or "woolens" or any other word or term descriptive of wool to designate any product not composed wholly of wool; with a proviso that goods composed in part of wool may be so advertised if the percentage of each con[579]stituent material is stated. The facts upon which the order is based are not seriously in dispute.

The petitioner conducts a retail department store in New York City and is engaged in both intrastate and interstate commerce. In March 1938 it purchased from a jobber in dress goods a job-lot of fabrics, comprising 7150 yards of "Mill ends", and put them on sale at its store. Some of the goods were all wool, but a large part of them were mixtures of wool and other material, such as rayon or cotton, in varying proportions. It advertised the goods as being offered at bargain prices and described them in its newspaper advertisement as "woolens"—a term which means to the purchasing public a fabric composed wholly of wool. The commission found that the goods were misrepresented in the advertisement and that such misrepresentation has the tendency to deceive the public and unfairly

to divert interstate trade from competitors of the petitioner; it made no finding that the petitioner knew, or was negligent in not knowing, that the goods were not all wool.

The petitioner contends that a single instance of unintentional misrepresentation does not constitute an unfair method of competition within the meaning of section 5 of the Federal Trade Commission Act of 1914, 15 U. S. C. A. § 45. We think it plain that soliciting the purchase of goods by advertisement is a method of competition; if the advertisement contains false representations, it is an unfair method of competition. Cf. *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed.. 307 (C. C. A. 7). Whether or not the advertiser knows the representations to be false, the deception of purchasers and the diversion of trade from competitors is the same. The purpose of the statute is protection of the public, not punishment of a wrongdoer. See *Federal Trade Commission* v. *Klesner*, 280 U. S. 19, 27; *Royal Baking Powder Co.* v. *Federal Trade Commission*, 281 Fed. 744, 752 (C. C. A. 2). It is in the public interest to prevent the sale of commodities by false and misleading statements. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483, 494; *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, 649, 651. Hence a deliberate effort to deceive is not necessary to make out a case of "using unfair methods of competition" within the prohibitions of the statute. *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 79, 81; *Federal Trade Commission* v. *Balme*, 23 F. (2d) 615, 621 (C. C. A. 2). The petitioner urges that a single instance of false advertising cannot be a "method" of unfair competition. There are at least dicta that a single act may be a violation of the statute. *Fox Film Corp.* v. *Federal Trade Commission*, 296 Fed. 353, 356 (C. C. A. 2); *Philip Carey Mfg. Co.* v. *Federal Trade Commission*, 29 F. (2d) 49, 51. But regardless of such dicta, the petitioner's conduct cannot rightly be treated as "a single instance of unintentional misrepresentation." The advertisement was published twice, on different dates, and it solicited numerous readers to make individual purchases of small portions of more than 7,000 yards of goods offered for sale. Such solicitation by false representations cannot be considered as a single act.

We are satisfied that the commission's order was correct, except for its burdensome proviso. This required, in the case of fabrics composed only partly of wool, words describing each constituent fibre in the order of its predominance by weight; and if any particular fibre was not present in a substantial amount by weight, the percentage in which such fibre is present was required to be stated. This goes too far. *Wrisley Co.* v. *Federal Trade Commission*, 113 F. (2d)

437, 442 (C. C. A. 7). The gist of the complaint was that the petitioner represented mixed goods as all-wool; but there was no charge that the petitioner had been selling mixed goods as such without describing each constituent fibre in the order of its predominance by weight, or specifying the percentage of the various ingredients. An order to desist from such a practice goes beyond the complaint, and to that extent the order is improvident. See *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427. To require each constituent element to be described in the order of its predominance or in percentages would seem to require the retailer to make a laboratory test of each piece of goods put on sale. The petitioner's competitors are not required to describe mixed woolens in any such detail. The commission expressly found that one competitor "truthfully represented" similar merchandise as "Mixtures of Wool [580] and Rayon". We think the order should be modified to direct the petitioner to cease and desist from:

"(1) Using the word 'wool,' or 'woolens' or any other word or term descriptive of wool, to describe, designate or in any way refer to any fabric or product which is not composed wholly of wool; provided, however, that in the case of fabrics or products composed in part of wool and in part of other fibers such words may be used as descriptive of the wool content if there is used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof.

"(2) Representing in any manner whatsoever that fabrics or products offered for sale or sold by it contain wool in greater quantity than is actually the case."

As so modified the order is affirmed.

KIDDER OIL COMPANY v. FEDERAL TRADE COMMISSION [1]

No. 7140

(Circuit Court of Appeals, Seventh Circuit. Jan. 15, 1941)

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—IN GENERAL.

On petition to review a cease and desist order of the Federal Trade Commission, the primary question for decision is whether the findings of fact as made by the commission upon which the order is predicated are sustained by substantial evidence. (Federal Trade Commission Act, sec. 5, 15 U. S. C. A. sec. 45.)

[1] Reported in 117 F. (2d) 892. For case before Commission, *see* 29 F. T. C. 987.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—TRIAL EXAMINER'S REPORT—COURT CONSIDERATION OF.

On petition to review a cease and desist order of the Federal Trade Commission, whether the report made to the commission by its trial examiner who heard the witnesses may properly be considered by the Circuit Court of Appeals is a discretionary matter with the court. (Federal Trade Commission Act, sec. 5 (c), 15 U. S. C. A. sec. 45 (c).)

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—TRIAL EXAMINER'S REPORT—COURT CONSIDERATION OF—WHERE VARIANCE WITH FINDINGS OF COMMISSION.

The fact that the findings of the Federal Trade Commission upon which its cease and desist order rested were at variance with the facts as reported by its trial examiner did not preclude the Circuit Court of Appeals from considering the examiner's report in its discretion in connection with the determination whether the findings were substantially supported by evidence.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—FINDINGS, ADDITIONALLY, BY COURT—LIMITATIONS.

On petition to review a cease and desist order of the Federal Trade Commission, the authority, if any, of the Circuit [893] Court of Appeals to make additional findings should be exercised, if ever, only where the findings as made by the commission are insufficient to dispose of the issues presented.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—TESTIMONY—WEIGHT.

On petition to review a cease and desist order of the Federal Trade Commission, it is not the province of the Circuit Court of Appeals to weigh the testimony.

EVIDENCE—FINDINGS AND ORDERS, ON REVIEW—ORDERS' SCOPE—AS EXCEEDING SUPPORTING—QUALITIES OR PROPERTIES OF PRODUCT—LUBRICANTS—AUTOMOTIVE AUXILIARY.

The Federal Trade Commission's findings that petitioner's product "Koatsal," an oil containing colloidal graphite sold for co-mingling as an auxiliary lubrication to oil universally used to lubricate internal combustion engines, produces no beneficial result under "boundary" conditions of lubrication were without substantial support in the evidence, and the commission's order precluding petitioner from making certain representations in selling and distributing its product was modified to require petitioner to cease and desist in manner provided only with respect to representations concerning "Koatsal" when used as a lubricant in a motor operated under "full-film" conditions.

(The syllabus, with substituted captions, is taken from 117 F. (2d) 892)

On petition to review cease and desist order of Commission, order modified and, as modified, affirmed.

Mr. Robert J. Weiss, of Chicago, Ill., for petitioner.

Mr. Wm. T. Kelley, Chief Counsel, and *Mr. Martin A. Morrison*, both of Washington, D. C., for the Commission.

Before SPARKS, MAJOR and KERNER, Circuit Judges.

MAJOR, *Circuit Judge:*

This is a petition to review a cease and desist order of the Federal Trade Commission, (hereinafter called the "Commission") issued September 19, 1939, in a proceeding had under Section 5 of the Federal Trade Commission Act. (15 U. S. C. A. § 45.) The controversy before the Commission, as here, was, in a broad sense, whether colloidal graphite in petitioner's product, known as "Koatsal," when added to lubricating oil in internal combustion engines, has the effect of substantially diminishing friction and reducing wear of the engine parts which move upon or against one another.

The issues involved arise from the complaint filed by the Commission, and petitioner's answer thereto. By the latter's answer, certain charges of the complaint were admitted and petitioner consented that a cease and desist order be entered in conformity thereto. It will only be necessary, therefore, to refer to the charges of the complaint which were denied by petitioner's answer. This portion of the complaint is as follows:

"In the course and conduct of its said business, as hereinabove described, respondent, in soliciting the sale of, and in selling its product, 'Koatsal,' by pamphlets, labels attached to containers of the product, letters, post cards, testimonials, advertisements inserted in newspapers, periodicals, and magazines, and otherwise, has made extravagant, deceptive, misleading, and false statements and representations regarding the value, efficacy, and effect of its said product, and the results that are achieved by using it, among which are the following:

* * * * * * *

"(b) That 'Koatsal' performs amazing feats of lubrication never before possible and utterly impossible by any other method, that it perfects lubrication and is more efficient than any other method because it is scientifically correct;

* * * * * * *

"(d) That 'Koatsal' penetrates and adheres to all metal surfaces it reaches, 'actually becomes a part of the metal, permeating the pores * * * literally "soaking" into it,' that the metal becomes plated with it and that moving parts ride on this plating;

"(e) That 'Koatsal' reduces friction as much as 50%, provides perfect protection against burned out bearings and makes metal self-lubricating;

* * * * * * *"

The portion of the cease and desist order now in controversy precludes petitioner, in connection with the offering for sale, sale [894] and distribution of its product "Koatsal," whether sold under that name or under any other name, from representing:

"* * * * * * *

"(2) That Koatsal penetrates and adheres to all metal surfaces it reaches, permeates the pores of the metal, soaks into the metal, and that the metal becomes plated with Koatsal and moving parts ride on this plating;

"(3) That an automobile conditioned with Koatsal will run any greater distance without oil in the crankcase without damage to any part than will an automobile conditioned with ordinary lubricating oil of the same quality used in Koatsal;

"(4) That the lubricating qualities of Koatsal are any greater than the lubricating qualities of the oil which it contains;

* * * * * * *"

As is common in cases of this character, the primary question for decision is whether the findings of fact as made by the Commission, upon which the cease and desist order is predicated, are sustained by substantial evidence. Other incidental issues, perhaps not necessary for decision of the main issue, are (1) whether the report made to the Commission by its Trial Examiner, who heard the witnesses, may properly be considered, and (2) whether this court should make certain findings of fact which were proposed to the Commission by the petitioner and which it is claimed were not included in the findings as made. We shall first discuss these incidental issues.

The Trial Examiner made an original report February 1, 1937. Thereafter, additional evidence was taken and the Examiner filed a supplemental report September 16, 1937, neither of which was incorporated in the Transcript, certified and filed by the Commission. Upon a supplemental petition filed by petitioner, this court directed the Commission to certify the reports made by the Trial Examiner without prejudice, however, to the right of the Commission to renew its objection to our action in this respect. The reports are here, and it is again contended by the Commission that, under the Statute and rules of the Commission, they are no part of the record. The Statute, Section 5 (c) provides that the Commission "shall certify and file in the court a Transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Commission." It further provides that the court "shall have power to make and enter upon the pleadings, evidence and proceedings set forth in such transcript a decree * * *." Rule 13 of the Commission's rules, adopted May 21, 1938, provides: "The Trial Examiner's report upon the evidence is not a decision, finding, or ruling of the Commission. It is not a part of the formal record in the proceeding, and is not to be included in a transcript of the record." It is pointed out by the Commission that there is no provision in the Statute for a report "upon the evidence" by the Trial Examiner, that such report is provided for only by the Commis-

sion rule which expressly states that such report is not a part of the record to be included in the transcript, and that, therefore, it is not required. Three cases are cited which it is claimed sustain this position. *Algoma Lumber Co., et al.* v. *Federal Trade Commission*, 56 F. (2d) 744, *Arrow-Hart and Hegeman Electric Co.* v. *Federal Trade Commission*, 63 F. (2d) 108, and *Federal Trade Commission* v. *Hires Turner Glass Co.*, 81 F. (2d) 362. In the Algoma case, the holding was to the effect that it was not incumbent upon the Commission to certify the Examiner's report unless such report was referred to in the findings of the Commission. That was not done there, nor is it done here, but the court further held that as to whether the Examiner's report should be subsequently certified, was a matter resting in the Court's discretion. In the Arrow-Hart case, it was held that the Commission was not required to certify the Examiner's report unless such report was referred to in the Commission's finding. In the Hires case, the court denied a request that the Commission be required to certify the report of the Trial Examiner.

The Examiner is an agent of the Commission, appointed, and with authority to conduct the hearing and make a report. It is the practice, as we understand—at any rate it was done in the instant case—when his report is filed with the Commission that a copy be served upon the interested party. Exceptions are, and in this case were, filed to such report. An argument was had before, and brief submitted to the Commission in support of the exceptions thus made. The Statute requires a "transcript of the entire record in the proceeding" and we think that the report thus became a part of the record in the proceeding, which, by the Statute, was required to be certified. If we are right in this construction of the Statute, the provision of [895] the Commission rule—"It is not a part of the formal record in the proceeding, and is not to be included in a transcript of the record" is in conflict with the Statute and of no effect. Assuming, however, that the Statute is not susceptible of such construction, we further are of the opinion that it is a discretionary matter with the court, properly exercised in the instant case. Such conclusion is not inconsistent with our statutory duty to accept the findings of the Commission as to the facts if supported by substantial evidence. In the instant case, the findings of the Commission, upon which its cease and desist order rests, are at variance with the facts as reported by its Examiner. The Commission undoubtedly had the right to make findings contrary to the facts as reported by its Examiner, but that does not preclude us from considering such report in connection with our determination as to whether such findings are substantially supported. In *Staley Manufacturing Company* v. *National Labor Relations Board*, (117 F.

(2d) 868), decided by this court November 14, 1940, in considering a similar situation, we said:

"* * * In the same connection, while the report of the Examiner is not binding on the Board, yet where it reaches a conclusion opposite to that of the Examiner, we think the report of the latter has a bearing on the question of substantial support and materially detracts therefrom."

Before considering petitioner's request that this court approve certain findings of fact which it proposed to the Commission, it seems appropriate to make some further statement concerning petitioner's product "Koatsal" as well as the use for which it was intended. Colloidal graphite is a product of the high-temperature furnace, consisting of pure graphite, which is an allotropic form of carbon subdivided into particles so small and fine that they can be suspended in oil, water, or other liquid medium and remain for a long time in suspension therein in a manner close to and having many properties of a true solution. Petitioner's product, which is an oil containing such graphite, is sold for co-mingling as an auxiliary or adjunct lubrication to the mineral oil which is universally used to lubricate engines. It is the colloidal graphite in the product, which, according to petitioner, produces the beneficial effect. It is generally recognized that in operating an automobile engine, it is dangerous to permit the supply of oil to diminish beyond a certain point; that, if the supply of oil reaches a certain lower limit, the scoring and wearing of cylinders, piston rings and bearings are likely to occur; that the engine without sufficient oil will heat, causing it to "seize" and be subjected to various other injurious effects. It is also generally recognized that there are two conditions of lubrication in an internal combustion engine which are known as "full-film" and "boundary" conditions. While this distinction apparently has a material bearing upon the findings of the Commission upon which its cease and desist order was issued, it is not necessary to review or quote the testimony of numerous witnesses in this regard for the reason that both the Examiner, in his report, and the Commission, in its findings, recognize such distinction. The following statement is from the Commission's findings:

"The primary function of any lubricant in aeroplane and automobile motors is to reduce friction. Friction is waste work and is reduced by the forming of a film of lubricant between the stationary and moving parts of a bearing holding them apart. There is practically no contact of metal to metal when a full film of lubricant is

maintained between the moving and stationary surfaces. However, within this lubricating film particles next to the moving surface are in motion and those next to the stationary surface are stationary so that there must be a constant shearing of the film, which action transforms work into heat. Twice in each revolution each piston pauses momentarily as it reverses direction. During that pause the tension in the rings tends to force out any lubricant between rings and the cylinder walls. In any automobile or aeroplane motor, even when running under full film conditions, there is a momentary shearing of the film.

"When an automobile is given a fresh charge of lubrication, the film is as full as it is possible to maintain between the metal surfaces. This is called full film lubrication. As the lubricant is consumed and only a thin film exists, boundary conditions are approached. Boundary condition is that stage of lubrication when the film is negligible."

The Commission also recognized that "boundary" conditions of lubrication occur under a variety of circumstances. Regarding such conditions, the following statement is made in its findings:

"Boundary conditions are often brought about by lowering the viscosity of the [896] lubricant, the introduction of grit between the surfaces and (of) the fluctuating temperatures under the wide range of speed and load of a motor. There are many other factors which cause boundary conditions."

Some of the "other factors" referred to by the witnesses are—"when a person starts his engine on a cold day in the winter time, boundary lubrication undoubtedly exists in the engine, since the oil is not able to get to the surfaces for some little time after the engine is started"; "excessive use of the choke would give a momentary low viscosity to the oil on the cylinder walls brought about by dilution of the oil with gasoline," and "Throughout the ordinary life of an automobile engine, in ordinary operation, there will be frequent conditions of boundary conditions of oil lubrication. I think it happens all of the time. The fact that you do get wear continuously in any engine shows that it is always present."

Petitioner submitted to the Commission eleven proposed findings covering many of the details involved in the controversy, which the Commission refused to accept or reject as presented. It is now urged by the petitioner that this court has the authority to make such findings and should do so in order that the controversy be ended. In this respect, *Federal Trade Commission* v. *Curtis Co.*, 260 U. S. 568, 580, is relied upon. The language used indicates that the court has

the authority to make additional findings, but at the same time the court states:

"* * * the matter may be and ordinarily, we think, should be remanded to the Commission—the primary fact-finding body—with direction to make additional findings, * * *"

Assuming that the court has such authority, we are of the opinion that it should be exercised, if ever, only in cases where the findings, as made by the Commission, are insufficient to dispose of the issues presented. In the instant case, we do not think that this can be said. It is true that many details incidentally involved are not determined by the Commission, but we know of no law or rule which imposes such requirement.

We are convinced that the findings as made by the Commission effectively dispose of all material issues adversely to petitioner. In order to illustrate this statement, we will refer to proposed findings 2 and 6, which furnish the strongest support to petitioner's contention.[1]

The Commission found:

"that the viscosity and other properties and qualities of a film of lubricant are unaffected by the presence of the colloidal graphite in 'Koatsal' whether a motor is operated under full-film or boundary conditions. 'Koatsal' has the same qualities, properties, and characteristics as the oil therein contained has and no more. Its effect upon the metal surfaces of a bearing is the same effect as is produced by the oil therein contained and no more.

"In tests made on bearings with plain oil and also with graphite oil, it has been determined that in the presence of an ample supply of oil, 'Koatsal' has no measurable effect on the friction, power, or economy of a gasoline engine. No reduction of friction is accomplished by conditioning a motor with 'Koatsal.'

"Tests were also made by running automobiles and bearings to destruction and comparisons made as to the effect of 'Koatsal' on durability of parts. It is determined from these tests that a bearing will run without substantial damage for an indefinite period after oil is drained from the crankcase so long as a film of oil is maintained between the moving and stationary surfaces of metal, whether the

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[1] 2. The colloidal graphite in Koatsal, when mixed in sufficient quantities in the lubricant of an internal combustion engine, becomes firmly affixed and adheres to the surfaces of the moving parts, forming on the surface thereof what is called a graphoid surface.

6. When colloidal graphite is mixed in sufficient quantities in the lubricant of an internal combustion engine or in its gasoline fuel, it brings about, under boundary conditions of lubrication, a substantial reduction in the friction developed between the surfaces in moving contact with each other to a degree which the tests and experiments made fix as in the neighborhood of 50%, the result of one of such experimental tests being a reduction of exactly 50% in wear of the moving parts.

bearing has been conditioned with 'Koatsal' or not. It is also determined from tests that as soon as the film of oil is removed and boundary conditions exist that a bearing is quickly destroyed, whether previously conditioned with 'Koatsal' or not."

Petitioner argues that this finding is merely a blanket condemnation of its pro[897]duct, with neither an affirmative nor a negative finding by the Commission as to any one or more of the proposed findings submitted. As stated, this is not a detailed finding, as requested, but there can be no doubt but that it effectively disposes of all material issues adversely to the petitioner. In other words, according to the findings as made, petitioner's product is without merit, has none of the advantages claimed for it, and the benefits produced by its use are nil. This is so whether the existing conditions of lubrication are "full-film" or "boundary" conditions.

It is upon this basis that we approach the primary issue as to whether such finding is supported by substantial evidence. In doing so, it should be kept in mind that petitioner, before the Commission, and here, relies chiefly upon the claim that its product is beneficial when a motor is operated under "boundary" conditions. The theory and claim is that under "full-film" conditions, there is a complete separation of the contacting surfaces by an oil film, and that under such circumstances, the colloidal graphite does not come into play. On the other hand, so it is claimed, the graphite forms a graphoid surface on the contacting parts so that when boundary conditions exist, the oil film is held in close contact with the graphite layer thus formed, thereby preventing friction and wear.

The Commission relies largely, if not entirely, upon its Exhibit 19, together with the testimony of two witnesses, Dill and Brooks, as furnishing competent, substantial evidence to support the findings as made. Exhibit 19 is a report on tests made by the United States Bureau of Standards of Pyr-Oil, manufactured by the Pyr-Oil Company of LaCrosse, Wisconsin.[2] That company had distributed through the mails advertising matter in which representations were made for Pyr-Oil similar to those made by petitioner for its product. The tests were made at the request of the Post Office Department with a view of ascertaining whether the representations made by the manufacturer of Pyr-Oil were violative of postal regulations. The Commission in its brief states that the conclusions drawn by the experts from this report, are:

[2] It was stipulated that the percentage of colloidal graphite in Pyr-Oil, as tested by the Bureau of Standards, is the same as that contained in "Koatsal" as sold and distributed by the petitioner.

"1. In the presence of an ample supply of oil, Pyr-Oil has no measurable effect on the friction, power, or economy of a gasoline engine.

"2. No reduction of friction whatever was found after the engine had operated the equivalent of more than 1,000 miles as directed."

It will be noted that such conclusions are predicated upon the "presence of an ample supply of oil," while the findings of the Commission are applicable to a motor operated under either "full-film" or "boundary" conditions. In either case, so the findings state, "its effect upon the metal surfaces of a bearing is the same effect as is produced by the oil therein contained and no more." While the Commission, in its findings, as stated heretofore, recognized the distinction between "full-film" and "boundary" conditions, it appears to have completely ignored such distinction in its findings and in its argument presented to this court as to the benefits claimed by petitioner for its product with a motor operated under "boundary" conditions.

Brooks arrived at the following conclusion from the tests made:

"I would say it is quite obvious that the use of Pyr-Oil in our destruction tests did not result in the engine operating materially longer."

The Commission states in its brief:

"* * * No evidence has been obtained by the Bureau of Standards that the use of graphite in the oil will lower friction in engine bearings when the engine is operated under full-film conditions.

"A witness for the petitioner testified that graphite in the lubricant would have no effect at all if the condition remained full-film lubrication. * * *"

The tests, as made by the Bureau of Standards, were not made with a motor in use upon a highway, but upon a Ford engine set on four pedestals and connected to an electric dinamometer. The report is of such length that we would not be justified in discussing it in detail. The report plainly discloses that the tests were conducted under conditions with a normal supply of oil. The report contains this statement.

"* * * It would appear then, that for an engine operating normally, a liquid lubricant is necessary to dissipate the heat whether Pyr-Oil is used or not and that in the presence of the liquid lubricant, the Pyr-Oil is superfluous.

[898] "The fact that engine parts wear is evidence that contact of moving parts does occasionally occur. It is possible that at such times a graphitic film on the surfaces would to some extent at least, protect them. However, as a comparative test for wear in normally operated

engines would cover a very long period of time, no such tests has been attempted. * * *"

The Auto Mechanics Department of the North Dakota Agricultural College conducted a test of Pyr-Oil and reached a conclusion as to its benefits contrary to that reached by the Bureau of Standards. In the report of the latter, in discussing the former, it is said:

"* * * The graphite deposited from the Pyr-Oil probably lubricated the bearing and enabled it to run longer and with less friction after the supply of oil had been cut off than would the small amount of oil which remained in the bearing alone. Bearings can undoubtedly be designed to run with graphite lubrication alone. However, such a bearing would be incapable of sustaining loads comparable to those which can safely be put on an equal bearing lubricated with oil. The bearing in which the test was made at the North Dakota State College would probably have done as well with any form of graphite lubricant. * * * The possible benefit of the graphite would occur if for any reason the oil supply should so diminish that metallic contact would occur in the absence of the graphite. * * *"

The witness Dill testified:

"* * * I am not a lubricating expert. I am not an expert on matters of lubrication of internal-combustion engines, so that I have no idea what 'boundary lubricating conditions' in regard to internal-combustion engines means. * * * At all times during our test, we had a full and ample supply of oil film, so that the oil film was there and not broken. * * *"

At one point in his testimony, the witness Brooks stated:

"I formed the opinion as the result of my tests and calculations that it was unlikely Pyr-Oil would be strongly beneficial in an engine."

The witness Dill also stated:

"I can tell you that the engine ran approximately 10 minutes after the run without Pyr-Oil and approximately 12 minutes on the run with Pyr-Oil. That is just brute memory without any notes to refresh my recollection. It is of some tests I made seven years ago. I have run quite many tests on various matters since 1931. * * * I was first approached with regard to my being a witness in this proceeding last week. Then I first started to think again about Pyr-Oil."

Again this same witness, when interrogated concerning Commission's Exhibit 19, answered "Yes" to the following question:

"And you say, elsewhere in the report, that, 'The fact that engine-parts wear is evidence that contact of moving parts does occasionally occur. It is possible that at such times a graphitic film on the surfaces would to some extent, at least, protect them.'"

As to one test conducted by the Bureau of Standards, the witness answered "Yes" to the following question:

"And you found in this case that the difference favored the use of Pyr-Oil by about 40 per cent"?

There also appears questions and answers as follows:

"Q. You draw the conclusion, then, that with Pyr-Oil added to the oil, before you drain the crankcase and eliminate the oil, you would not expect that it would run ten times as long as if the Pyr-Oil had not been put in?

"A. That is my conclusion, to the best of my belief.

"Q. And that is as far as you can go with this test?

"A. Entirely."

From a study of Commission's Exhibit 19, and the testimony of Brooks and Dill, we have little hesitancy in reaching the conclusion that they afford no substantial support for the Commission's conclusion that petitioner's product is without merit. Certainly they fail to furnish even a scintilla of support that the product is without merit when used under "boundary" conditions. In fact, neither the report of the Bureau of Standards nor the testimony of these witnesses purport to relate to a test made under such conditions. On the contrary, they expressly limit themselves to a motor operated with a normal supply of oil, or under "full-film" conditions. Even when the product was employed under "full-film" conditions, the result of their test, according to the report and testimony, is anything but certain. They do not claim that the product is without benefit, but dispute that it is "strongly" or "materially" beneficial.

It is also of some significance that the tests upon which the Commission relies were made more than seven years previous to the hearing. Much of the testimony of Brooks and Dill was from memory, which [899] perhaps accounts for their uncertainty and indecision in numerous respects. It is no reflection upon the Bureau of Standards for us to conclude that the report and testimony concerning such tests are far from convincing. In this connection, it is difficult to understand why the Commission would go to hearing on such an important controversy, relying upon tests so uncertain and dubious both in their nature and result. A study of the record is convincing that the overwhelming weight of the testimony is contrary to the Commission's contention, and under such circumstances, it occurs to us that the Commission would have discerned the importance, and perhaps the necessity, of making such tests and experiments as would demonstrate, at least to a reasonable certainty, the validity of the charge which it had the burden of sustaining.

We think it is also relevant to point out that whatever probative value may be attached to the Commission's Exhibit 19, and the testimony of Brooks and Dill, is materially weakened by the Commission's Exhibit 6. This was a circular letter issued by the Bureau of Standards revised to April 3, 1934, which was subsequent to tests referred to in Exhibit 19, and those made by Brooks and Dill. This circular letter was issued, so it was stated, in response to numerous inquiries regarding various lubricants containing graphite. To our minds this letter completely illustrates the fog of uncertainty and indecision which prevails in the Bureau of Standards concerning the results attending the use of graphite in lubricants. They again reaffirm their negative conclusion: "No evidence has been obtained that the use of graphite in the oil will lower friction in engine bearings, when the engine is operated under full-film conditions." The letter goes on to state: "When graphite is added to the mineral oil * * * the viscosity of the oil after mixing is lower than the viscosity of the original oil." At a later point in the letter is this statement: "No appreciable increase in engine horse power or in maximum car speed would be expected as a result of using graphite in an engine in good mechanical condition, unless the blending with the graphited preparation produces a decrease in viscosity." Taking these two statements together, they seem to lead to the incongruous result that the addition of graphite decreases the viscosity of the oil, but that no benefit will result from its use unless it produces such decrease. At another point, the letter states: "It is known that graphite tends to fill up the pores of cast-iron surfaces and to adhere very tenaciously. This may result in a somewhat smoother surface and may produce a slight lowering in the friction. * * * The use of a lubricated gasoline may be of some benefit in tending to reduce the wear on the piston rings and cylinders." Thus, all through this letter, as in Exhibit 19, and the testimony of Brooks and Dill, the information (if it may be called such) is what graphite may or might do, rather than what it does or does not do. Information of such a speculative and uncertain nature can afford little, if any, support to findings based thereon.

The report of the Commission's Examiner is before us and contains an exhaustive and, we think, accurate review of the evidence in the case. We shall not refer to the conclusion reached by the Examiner, except to state that his findings of matters material to the instant order are at variance with the findings of the Commission. As we have already said, the Commission is not bound by the findings of its Examiner, but under the circumstances of this case, we think the Examiner's report materially detracts from the Commission's claim that its findings are substantially supported. We recognize that our province is not to weigh the testimony, but we think it is not inappropriate

to briefly refer to some of the direct positive testimony which contradicts many of the uncertain statements made by the witnesses relied upon by the Commission, and the inferences indulged in by such witnesses. In fact, the testimony of numerous of the Commission's witnesses is at variance with its findings, and contradicts the inferences of the witnesses Brooks and Dill, relied upon by the Commission.

Professor Linsenmeyer, a Commission witness, is head of the Mechanical Engineering Department of the University of Detroit, and has been for fourteen years. He has made extensive studies of lubricants. In one test he took two new Ford automobiles directly from the factory and drained the lubricant from both cars. One car was then filled with a colloidal graphite treated oil, and the other with an ordinary high-grade motor oil. The cars were driven upon the highway in a test under the same or similar conditions. The car with ordinary motor oil was destroyed at a distance of 3739 miles, and the car contain[900]ing the colloidal graphite was drivten a distance of 5058 miles, at which time the drain plug was removed and the car operated a further distance of 16 miles. Regarding petitioner's claim that its product reduces friction as much as 50%, the witness testified:

"Well, the fact that we did get this improved economy and the decrease in friction, of my value of 36%, I think would not invalidate the claims of 50, for, after all, our condition was at the one speed. Perhaps if we had selected another speed it would have been a little more than 36%, so it met these claims of 50%. I think that is merely relative. I do know it would improve the frictional properties to a substantial amount."

Raymond Szymanowitz, another Commission witness, is a technical director of the Acheson Colloids Corporation. He has a degree of Bachelor of Science from Cooper Union. His experience has been extensive in the industrial field, and he has made special studies in connection with colloidal graphite. He testified concerning comparative tests of plain oil and graphited oil. In each case the oil supply was shut off after the motor had operated for thirty minutes. The result of these tests was illustrated by Commission's Exhibit 1. Referring to this Exhibit, the witness said:

"* * * You will see in the case of the plain oil, there was a minimum rise in friction to seizure at this point. However, when the graphited oil was used the supply cut off at the same time, it continued to run and seizure took place I believe in 26 hours."

At another point this witness was asked:

"Do you have any data showing the effect of what protection against burned out bearings collodial graphite can give"?
and he answered:

"Well, the graph which I have referred to as Commission's Exhibit No. 1, for identification, you will note the line showing the point at which the oil supply became first exhausted or seriously diminished. In that particular exhibit you will find a graph which shows that even in the absence of oil the graphite has permitted the bearing to function unimpaired for quite a few hours."

He further related that the cars used in the test were run a certain distance, and at the end of that time the oil was removed from the crankcase. After the oil was thus drained, the cars whose lubricant had been treated with colloidal graphite would run as far as 47 miles. Concerning petitioner's representation that the use of colloidal graphite results in a car running an amazing distance without oil, the witness said:

"It depends on what you mean by the words 'amazing distance.' Some people might think that was amazing as a distance. * * *"

Frank S. Spring, another witness for the Commission, is the Automobile Engineer for the Hudson Motor Car Company, and has had experience with lubricants and colloidal graphite in motor cars. He testified—

"We have made various tests with it, and we find it is rather difficult to come to any very definite conclusions, because the difference between ordinary lubricant and a lubricant when this colloidal graphite is added, is not as great as the difference in the ordinary run of automobile engines. I think it is beneficial in new engines during the run-in period. We have made perhaps 100 tests, and my conclusion is that it is beneficial on new cars or new engines until they are well broken in."

It will be noted that so far as we have alluded only to the testimony of witnesses for the Commission, and certain of its Exhibits. To go further might subject us to the criticism of weighing the testimony, which we are endeavoring to avoid. We shall, therefore, only make brief reference to the voluminous testimony, oral and documentary, offered by the petitioner.

Among such witnesses is George A. Abbott, head of the Chemical Department of the University of North Dakota. As a chemist of wide experience, he has interested himself for many years in lubricating problems, including that of colloidal graphite. He testified as to its beneficial effect, and, in substance, that colloidal graphite actually penetrates the metal with which it comes in contact. He further gave it as his opinion that the word "adsorption" was preferable to the word "penetrate."

C. G. Williams, Director of Research of the Institution of Automobile Engineers, testified that tests made by him disclosed that the addition of colloidal graphite to fuel brought about a reduction in wear ranging from 12 to 37 per cent for the piston rings and ranging from 27 to 50 per cent for the cylinder wear.

Petitioner's Exhibit 3 is an article on "The Graphoid Layer on Bearing Surfaces" by Professors Finch and E. J. Whitmore, Scientists of England. This article [901] discloses that experiments with bearing surfaces lubricated with oils containing colloidal graphite * * * point to the formation of an extremely thin and adherent layer parallel to the surface, and that its effect persists long after the supply of liquid lubricant is removed.

Doctor Charles F. Mabery, Professor of Chemistry, Case School of Applied Science, Cleveland, Ohio, in a paper before the American Society of Mechanical Engineers, states:

"* * * Natural graphite serves an excellent purpose on cast-iron bearings, acting as a surface evener of the porous metals. * * *"

He further states:

"There is probably no variety of lubrication in which colloidal graphite shows its economic value to better advantage than in reducing the friction on automobile bearings. * * *"

T. C. Thomsen, a chemist of repute, with reference to tests conducted by him, said:

"* * * The tests showed that with colloidal graphite the piston-ring wear was halved."

Professor Erwin H. Hamilton, Associate Professor of Automotive Engineering at the New York University, testified that as a result of a number of researches and tests for various companies "an automobile conditioned with colloidal graphite will run longer—a greater distance without oil in the crankcase, without damage to the parts, than will an automobile conditioned with ordinary lubricating oil. * * *"

A number of other witnesses gave testimony to the same effect. In addition, numerous articles from engineering, automobile and mechanical publications were offered in evidence in support of the claim made by the petitioner as to the beneficial results attained from the use of its product.

The conclusion follows, from what we have said, that the Commission's findings that petitioner's product produces no beneficial result under "boundary" conditions of lubrication, is without substantial support. On the other hand, the record convincingly discloses to the contrary. There is a difference of opinion, however, as to the extent

of such benefits. This difference of opinion exists largely among petitioner's witnesses, as the Exhibits and witnesses relied upon by the Commission dealt mostly, if not entirely, with the effect under "full-film" conditions of lubrication. Petitioner's representation that its product will enable a motor car to operate an "amazing distance" without oil, or that its product is a "perfect" lubrication, evidently is some exaggeration. To what extent, however, it is difficult to say. Such terms are largely a matter of personal opinion. What might be an "amazing distance" to one person might cause no surprise to another. So far as we know, there is nothing "perfect" in this world, but still it is a common term, which undoubtedly means nothing more than that the product is good or of high quality. We can conceive of situations where the use of such words might be deceptive and even fraudulent. As used by petitioner, however, we are of the opinion that they are nothing more than a form of "puffing" not calculated to deceive.

Paragraphs 1 and 5 of the Commission's cease and desist order are not in controversy in view of the admissions contained in petitioner's answer to the complaint. Paragraphs 2, 3, and 4 of the order, set forth heretofore in this opinion, cannot be affirmed as written for the reason that the findings upon which they are predicated are not substantially supported. Such paragraphs, therefore, are modified so as to require petitioner to cease and desist in the manner provided only as to the representations concerning "Koatsal" when the same is used as a lubricant in a motor operated under "full-film" conditions.

The cease and desist order is modified as indicated, and as modified is affirmed.

On Petition for Rehearing

MAJOR, *Circuit Judge:*

We have before us a petition for rehearing, as well as a form of enforcement decree proposed by both petitioner and respondent. We are of the opinion that the decree proposed by the respondent is in conformity with our opinion. We held that the Cease and Desist Order, concerning petitioner's product, when used under "boundary" conditions, was without substantial support. To go further is to enter a controverted field where we are not permitted, and did not intend, to enter. In other words, the testimony as to the effect of the product in question under "full film" conditions is in dispute and we did not hold that the evidence was insufficient to sustain respondent's order in this respect. The decree proposed by the petitioner, as

contended for in its petition for rehearing, would require a holding in its favor when its product is used under "full film" as well as under "boundary" conditions. This argument was given due con-[902]sideration in the opinion and decided adversely to petitioner.

Our attention is called to an apparent error on Page 2 of the opinion. The controverted issues are there stated under subdivisions (b), (d), and (e), which should be (d), (e), and (f). (b) is therefore eliminated and there is inserted in its place:

"(f) That an automobile conditioned with 'Koatsal' can run an amazing distance without oil in the crankcase without damage to any part."

The petition for rehearing is denied, the decree proposed by petitioner refused, and that proposed by respondent approved.

FEDERAL TRADE COMMISSION v. BIDDLE PURCHASING COMPANY [1]

No. 15624

(Circuit Court of Appeals, Second Circuit. Jan. 18, 1941)

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—CONTEMPT PROCEEDINGS—PETITIONS TO ADJUDGE, ETC.—BILLS OF PARTICULARS—WHERE NO VIOLATING TRANSACTION PARTICULARIZED.

Where Federal Trade Commission's petition to adjudge corporation in contempt for violating order of Circuit Court of Appeals, affirming Commission's order directing corporation to cease and desist from violating price discrimination act, did not particularize any transaction violating order, corporation's motion for bill of particulars should be granted to extent of requiring Commission to particularize at least one typical transaction under each subparagraph, alleging such violations, in petition, and more if necessary, sufficiently to inform respondent and court of time, place and nature of claimed violations. (Robinson-Patman Act, sec. 2 (c), 15 U. S. C. A. sec. 13 (c).)

(The syllabus, with substituted caption, is taken from 117 F. (2d) 29)

On petition by Commission for adjudication of contempt by respondent in violating court's order in 96 F. (2d) 687, 26 F. T. C. 1511, affirming cease and desist order of Commission, and respondent's motion for bill of particulars, such motion granted in part.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Joseph J. Smith, Jr.*, and *Mr. John Darsey*, special attorneys, all of Washington, D. C., for the Commission.

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[1] Reported in 117 F. (2d) 29. For case before Commission, *see* 25 F. T. C. 564. *See, post,* p. 1867, for further proceedings.

Mr. Gilbert H. Montague, of New York City, for respondent.

Before SWAN, CHASE, and CLARK, Circuit Judges.

Per Curiam:

This court heretofore affirmed an order of the commission directing the respondent to cease and desist from certain conduct found to be violative of section 2c of the Robinson-Patman Act, 15 U. S. C. A. § 13c. *Biddle Purchasing Company* v. *Federal Trade Commission*, 96 F. (2d) 687. The present petition alleges that since May 9, 1938, the date of this court's said order, the respondent has violated said order; it seeks to have the respondent adjudged in contempt. The petition does not particularize any transaction which is charged to be in violation of the order; nor does it state when, where or under what circumstances it occurred. The respondent has moved for a "bill of particulars setting forth by names, addresses, dates, products, figures, prices and other identifying details" which are the particular specific transactions relied upon by the commission as supporting "the general and argumentative statements" in the subparagraphs of paragraph 6 of the petition.

We think the motion should be granted to the extent of requiring the commission to particularize at least one typical transaction under each subparagraph of said paragraph 6, and more if that is necessary, sufficiently to inform the respondent and the court of the time, place and nature of all the acts which are claimed to violate the order of this court. This will be no hardship to the petitioner for it has had access to the books [30] and records of the respondent and presumably knows which of the thousands of transactions are relied upon as violative of the order. It is required in fairness to the respondent, for without a bill of particulars the respondent has no adequate warning of the issues it must meet. The generality of the charges in the petition is such that it is impossible to know when and in what manner the respondent's violation of the order is supposed to have occurred.

CLARK, *Circuit Judge* (concurring):

With some hesitation I concur; if there is a chance of simplifying issues in this way, I do not wish to stand in the way thereof, since this order will not limit the Commission in the evidence eventually to be produced on a reference. But I think it is clear as to trial courts that where a claim for relief is presented, motions for particulars almost always serve to delay adjudication, with rarely any benefit in clarity or in limiting proof (*cf.* 25 A. B. A. J. 22, 23; Proceedings of New York Symposium on Federal Rules, 1938, 242–247; 3 Fed. Rules Serv. 681; and the numerous decisions under Federal Rule 12e), and I expect the experience in appellate courts will not be different. Here,

until the facts are found, we cannot make intelligent or final adjudication. Preliminary controversies on the paper pleadings, of which this is already the second, are, I fear, likely to exhaust the efforts of all without bringing decision appreciably nearer.

NEFF v. FEDERAL TRADE COMMISSION[1]

No. 4699

(Circuit Court of Appeals, Fourth Circuit. Feb. 8, 1941)

FEDERAL TRADE COMMISSION ACT—SECTION 5—COURT REVIEW—CONFLICTING TESTIMONY—LIMITATION ON COURT.

Under the section of the Federal Trade Commission Act providing that review of an order by the Circuit Court of Appeals shall be limited to a consideration of matters of law and that the findings of the commission if supported by evidence shall be conclusive, the court may not pass on the weight to be given to conflicting testimony, and, if the findings of the commission are supported by substantial evidence they are binding on the court. (Federal Trade Commission Act, sec. 5 (c), as amended by Act March 21, 1938, 15 U. S. C. A., sec. 45 (c).)

EVIDENCE—FINDINGS AND ORDERS, ON REVIEW—EXPERT TESTIMONY—AS SUBSTANTIAL AND SUSTAINING—QUALITIES OR PROPERTIES OF PRODUCT—MEDICINAL PREPARATION.

The opinions of six well-qualified experts, based on their general medical and pharmacological knowledge and on a chemical analysis of medicinal preparation for [496] internal use, that preparation could not perform cures claimed for it and had no value as a remedy, constituted "substantial evidence" showing that distributor of preparation was not justified in making representations concerning preparation's remedial qualities and supported Federal Trade Commission's finding that preparation was not a safe, competent, and reliable remedy, as advertised.

(The syllabus, with substituted captions, is taken from 117 F. (2d) 495)

On petition to review cease and desist order of Commission, order affirmed.

Mr. D. H. Cotten, of Oklahoma City, Okla. (*Mr. Charles Rowan*, of Milwaukee, Wis., on the brief), for petitioner.

Mr. Martin A. Morrison, assistant chief counsel, Federal Trade Commission, of Washington, D. C. (*Mr. W. T. Kelley*, chief counsel, and *Mr. William L. Taggart* and *Mr. James W. Nichol*, special attorneys, Federal Trade Commission, all of Washington, D. C., on the brief), for Commission.

Before PARKER, SOPER, and DOBIE, Circuit Judges.

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[1] Reported in 117 F. (2d) 495. For case before Commission, *see* 31 F. T. C. 574.

SOPER, *Circuit Judge:*

This case comes before the court on a petition brought under § 5 (c) of the Federal Trade Commission Act, as amended by the Act of March 21, 1938, 15 U. S. C. A. 45 (1940 Supp.), to review a cease and desist order of the Federal Trade Commission entered on July 16, 1940.

The petitioner, whose principal office is located at Miami, Oklahoma, is an individual doing business under the trade name of the Prostex Company. He is engaged in selling and distributing in interstate commerce a medicinal preparation for internal use, known as Glantex. In an advertising campaign carried out by means of magazines, radio, circulars and form letters, the public has been informed that Glantex possesses remarkable curative properties. It has been represented that the product is a quick acting remedy, which affords relief to those suffering from prostatitis, cystitis, urethritis, catarrhal conditions of the urinary tract, sugar diabetes, dropsy, illiocolitis, acute indigestion, ptomaine poisoning, gastritis, malaria and all forms of bowel trouble.

In its complaint filed January 4, 1938, the Commission charged that these statements were false and misleading, and therefore constituted an unfair method of competition within the intent of § 5 of the Act. After a hearing, it was found by the Commission that Glantex was not a safe, competent, and reliable remedy or treatment for any of the diseases set forth above, that its chemical composition was such that it could not be expected to produce any therapeutic effect upon any known disease or pathological condition, and that when taken internally it was nothing more than a laxative. Therefore, the petitioner was ordered to cease and desist from representing directly or indirectly that his preparation possessed any therapeutic value besides its laxative qualities. The petitioner now seeks to have this order set aside on the grounds that the findings of the Commission, on which its order is based, were not supported by substantial evidence as required by § 5 (c) of the statute.

The findings of the Commission as to the value of Glantex as a remedy was founded upon the testimony of six doctors who testified as expert witnesses for the Commission. It is true that none of these witnesses had any actual experience with the use of Glantex, nor had they conducted any clinical tests to ascertain just what results might be expected from it. Their conclusions were based upon a chemical analysis of Glantex, and their general knowledge of medicine. They all stated that it simply could not perform the cures claimed for it, and did not have any value as a remedy. Their testimony, standing alone, fully supports the finding of the Commission. But the petitioner con-

tends that this evidence is completely nullified by the statements of his experts who had treated patients with his product and whose testimony, taken as a whole, tends to justify his extravagant claims. He argues that where there is direct testimony based upon actual experience, the opinion evidence of experts based upon general knowledge of a subject must be disregarded, and hence the finding of the Commission in this case cannot be deemed [497] to be supported by substantial evidence and should be set aside.

In support of his position, the petitioner relies upon the case of *Cornec* v. *Baltimore & O. R. Co.*, 4 Cir., 48 F. (2d) 497, in which one of the issues of fact was whether an explosion had been caused by sparks emitted by the loading apparatus of the railroad, or by open kerosene lamps used by stevedores. Eyewitnesses attributed the explosion to the cause first mentioned, and the only substantial evidence to the contrary was the opinion of one of the experts. We said: (P. 500) "Direct evidence of an occurrence is, of course, entitled to greater weight than opinion evidence (*Lancashire Shipping Co.* v. *Morse Dry Dock & Repair Co.*, (D. C.) 43 F. (2d) 750); and we should hesitate to base a finding upon the opinion evidence here, which is opposed to the overwhelming weight of the testimony of eyewitnesses."

It is apparent from this quotation that we did not lay down the broad rule contended for by the petitioner. The case is authority only for the proposition that the testimony of one expert is not entitled to as great weight as the testimony of a number of eyewitnesses. Furthermore, there is another and more fundamental reason why the decision in the Cornec case is not helpful. That was an appeal in admiralty where a presumption of correctness attends the findings of fact of the trial court, but the Court of Appeals is nevertheless free to weigh the evidence and reach its own conclusions. *The Adriana*, 4 Cir., 6 F. (2d) 860; *The Perry Setzer*, 2 Cir., 299 Fed. 586. The question presented to the court in the pending case is entirely different. Section 5 (c) of the Federal Trade Commission statute expressly provides that our review shall be limited to a consideration of matters of law and that "the findings of the Commission, if supported by evidence, shall be conclusive". It is settled beyond controversy that under such a statute, this court may not pass upon the weight to be given to conflicting testimony. If the findings of the Commission are supported by substantial evidence, they are binding upon us.

The actual question now presented is whether the testimony of the six experts who testified for the Commission can be considered substantial evidence in view of their lack of actual experience in the use

of the petitioner's preparation, as compared with the conflicting statements of doctors who had administered Glantex to their patients. We think that the evidence is sufficient to support the Commission's finding. All of the experts were well qualified to speak upon the subject; and their opinions, though based only upon their general medical and pharmacological knowledge, constituted substantial evidence tending to show that the representations of the petitioner were not justified. See, *Justin Haynes & Co.* v. *Federal Trade Commission*, 2 Cir., 105 F. (2d) 988; *Dr. W. B. Caldwell, Inc.* v. *Federal Trade Commission*, 7 Cir., 111 F. (2d) 889.

A decree affirming the order of the Commission will be signed.

Affirmed.

ROCK v. FEDERAL TRADE COMMISSION [1]

No. 7078

(Circuit Court of Appeals, Seventh Circuit. Feb. 14, 1941)

FEDERAL TRADE COMMISSION ACT—SECTION 5—PRECEDURE AND PROCEEDINGS UNDER—STIPULATION THERETOFORE TO ELIMINATE OBJECTIONABLE MATTER—AS NOT BARRING PROCEEDING THEREAFTER FOR SUBSEQUENT IMPROPER CONDUCT BY PHYSICIAN IN SALE AND DISTRIBUTION OF TABLETS AND OINTMENTS.

Stipulation entered into between Federal Trade Commission and a physician, charged with using unfair methods of competition in sale and distribution of tablets and ointments for use by those afflicted with goitre, whereby it was agreed that objectionable matter would be eliminated in future could not be set up in bar to proceedings against physician for subsequent improper conduct. (Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45.)

EVIDENCE—FINDINGS AND ORDERS, ON REVIEW—QUALITIES OR PROPERTIES OF PRODUCT—MEDICINAL PREPARATIONS.

Evidence justified order of Federal Trade Commission directing physician to cease and desist from certain practices in sale and distribution of medicinal preparations for use by those afflicted with goitre.

(Syllabus, with substituted captions, is taken from 117 F. (2d) 680)

[681] In proceeding by Monica M. Rock, individually and as executrix of the estate of Dr. Arthur A. Rock, deceased, as successor to Dr. Arthur A. Rock, to review order of Commission directing petitioner to cease and desist from certain practices, order of Commission affirmed.

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[1] Reported in 117 F. (2d) 680. For case before Commission, *see* 29 F. T. C. 308.

Mr. John F. Rosen and *Mr. James B. O'Shaughnessy*, both of Chicago, Ill., for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, of Washington, D. C., on the brief, but *Mr. Martin A. Morrison*, assistant chief counsel, of Washington, D. C., actually appeared, for the Commission.

Before SPARKS and KERNER, Circuit Judges, and BRIGGLE, District Judge.

BRIGGLE, *District Judge:*

This is a proceeding to review an order of the Federal Trade Commission, directing present petitioner to cease and desist from certain practices in connection with the sale and distribution of certain medicinal preparations. The complaint was directed against Dr. Arthur A. Rock but during the pendency of the proceeding Dr. Rock died, and by agreement of the parties, present petitioner was substituted and it was agreed that the proceedings should be governed by the same considerations of law and fact as would have been applicable were the original respondent still living.

The petitioner here was respondent in the hearing before the Federal Trade Commission and in this Court the Federal Trade Commission is respondent. To obviate confusion, the term "respondent" when further used in this opinion will refer to Dr. Arthur A. Rock or his legal representative, and the Federal Trade Commission will be referred to as the "commission."

The complaint, bearing date August 8, 1935, charges that respondent uses unfair methods of competition in the sale and distribution in interstate commerce of certain tablets and ointment for use by those afflicted with goitre. That respondent in advertising his method of treatment of goitre causes advertisements alleged to be misleading and false to be inserted in magazines and other publications and distributes form letters, a copyrighted book, pamphlets, etc., to the public, likewise alleged to be misleading and false. That such acts are to the injury and prejudice of the public as well as the competitors of respondent within the intent and meaning of Section 5 of the Federal Trade Commission Act, 15 U. S. C. A. Sec. 45.

Respondent filed his answer to such complaint, alleging, among other things, that on September 10, 1931, he received a notice from the commission for a preliminary hearing for the purpose of considering whether a complaint should then be issued against him, based upon charges of false and misleading statements in his advertisements and literature; that he appeared by counsel before the commission on October 20, 1931, and produced the advertisements and literature so complained of, and after a full consideration by the commission a

stipulation, bearing date February 5, 1932, was entered into between the commission and the respondent, whereby it was agreed that such objectionable matter would be eliminated in the future. That immediately upon the entering of such stipulation he proceeded to carry out in good faith all its provisions.

The answer further alleges that the matters involved in the present complaint were fully considered by the commission and disposed of by them in such stipulation and same should be held a bar to the present proceeding. Further admissions and denials in reference to the specific charges are made but need not be here detailed.

The stipulation further provided that if Dr. Rock should ever resume or indulge in any practice violative of the provision of the agreement that the stipulation might be used in evidence against him. The stipulation was offered and received in evidence at the hearing on the present complaint over objection of respondent. Other evidence was received in support of the present complaint. Respondent's proof consisted wholly of showing what transpired at the hearing in 1931 leading to the stipulation; he elected to rest his defense solely on the previous proceeding as a bar and introduced no evidence to controvert the other proof in support of the present complaint.

The commission made extensive findings of fact and entered the cease and desist order now complained of.

We think a fair interpretation of the present complaint justifies the conclusion [682] that it, in effect, charged the violation of the stipulation by charging that respondent was presently engaged in acts which, if true, would amount to a violation of the stipulation. Respondent erroneously assumes that the hearing before the commission was wholly based upon charges previously considered in 1932 at the time of the stipulation. An examination of the record discloses that while this was to a great extent true, yet there was some evidence, unchallenged in the record, of a continued use by respondent of methods condemned by fair dealing and wholesome practice—methods that tended to mislead and deceive the public.

Whether the stipulation and order of the commission in 1932 could, under any circumstances, be set up in bar as contended by respondent, need not be considered as such stipulation could not, in any event, be a bar to subsequent improper conduct as found by the commission. Such findings are supported by substantial evidence and are not here assailable.

The order of the commission is *Affirmed.*

FEDERAL TRADE COMMISSION v. BUNTE BROTHERS, INC.[1]

No. 85

(Supreme Court. Argued Jan. 6, 1941. Decided Feb. 17, 1941)

STATUTES AND STATUTORY CONSTRUCTION—CONGRESSIONAL LEGISLATION—FEDERAL TRADE COMMISSION ACT—AIM AND NATURE.

The construction of a statute as the Federal Trade Commission Act presents a unique problem in which words derive vitality from the aim and nature of the specific legislation. (Federal Trade Commission Act, secs. 4, 5 (a), as amended, 15 U. S. C. A., secs. 44, 45 (a).)

STATUTES AND STATUTORY CONSTRUCTION—CONGRESSIONAL LEGISLATION—SCOPE—LOCAL AND NATIONAL INTERESTS—ADJUSTMENT IN FEDERAL SCHEME, IN ASCERTAINMENT OF.

In ascertaining scope of congressional legislation, a due regard for proper adjustment of local and national interests in the federal scheme must always be in the background.

STATUTES AND STATUTORY CONSTRUCTION—CONGRESSIONAL LEGISLATION—FEDERAL TRADE COMMISSION ACT—"UNFAIR METHODS OF COMPETITION IN COMMERCE"—EXTENT OF PROHIBITION.

Under Federal Trade Commission Act, court ought not to find in section authorizing Commission to prevent persons from using unfair methods of competition in commerce, radiations beyond obvious meaning of language, unless otherwise purpose of act would be defeated, since in ascertaining scope of congressional legislation, a due regard for proper adjustment of local and national interests in the federal scheme must always be in the background.

STATUTES AND STATUTORY CONSTRUCTION—CONGRESSIONAL LEGISLATION—FEDERAL TRADE COMMISSION ACT—"UNFAIR METHODS OF COMPETITION IN COMMERCE"—EXTENT OF PROHIBITION—INTRASTATE TRANSACTIONS—WHETHER CONTROL ESSENTIAL TO ACT'S EFFECTIVE ENFORCEMENT.

That Federal Trade Commission for a quarter century did not claim that it could proscribe unfair methods used in intrastate sales when such resulted in handicap to interstate competitors is a powerful indication that effective enforcement of Trade Commission Act is not dependent upon control over intrastate transactions.

STATUTES AND STATUTORY CONSTRUCTION—CONGRESSIONAL LEGISLATION—SCOPE—POWER'S NON-ASSERTION—AS WEIGHING IN DETERMINATION OF.

Authority actually granted by Congress cannot evaporate through lack of administrative exercise, but just as established practice may shed light on extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred.

[1] Reported in 312 U. S. 349, 61 S. Ct. 580. Decision of court below is reported in 110 F. (2d) 412, 30 F. T. C. 1650. For case before Commission, *see* 27 F. T. C. 911.

STATUTES AND STATUTORY CONSTRUCTION—CONGRESSIONAL LEGISLATION—FEDERAL TRADE COMMISSION ACT—"UNFAIR METHODS OF COMPETITION IN COMMERCE"—EXTENT OF PROHIBITION—INTRASTATE TRANSACTIONS—WHETHER EMBRACED BY—PRIOR ADMINISTRATIVE CONSTRUCTION AND WITHHOLDING OF EXPRESS GRANT BY CONGRESS AS NEGATIVING.

The practical construction of Federal Trade Commission Act by those entrusted with its administration that Commission may not proscribe unfair methods used in intrastate sales when such result in handicap to interstate competitors is reinforced by Commission's unsuccessful attempt to secure from Congress an express grant of authority over transactions "affecting" commerce in addition to Commission's control of practices in commerce.

STATUTES AND STATUTORY CONSTRUCTION—CONGRESSIONAL LEGISLATION—FEDERAL TRADE COMMISSION ACT—"UNFAIR METHODS OF COMPETITION IN COMMERCE"—EXTENT OF PROHIBITION—INTRASTATE TRANSACTIONS—WHETHER EMBRACED BY—INTERSTATE COMMERCE ACT—AS EVIDENTIAL ON.

The Interstate Commerce Act and the Federal Trade Commission Act are widely different in their historic settings, in the enterprises which they affect, in the range of control they exercise, and in the relation of these controls to the functioning of the federal system. (Interstate Commerce Act, sec. 13 (4), 49 U. S. C. A. sec. 13 (4).)

STATUTES AND STATUTORY CONSTRUCTION—CONGRESSIONAL LEGISLATION—FEDERAL TRADE COMMISSION ACT—"UNFAIR METHODS OF COMPETITION IN COMMERCE"—EXTENT OF PROHIBITION—INTRASTATE TRANSACTIONS—WHETHER EMBRACED BY—INTERSTATE COMMERCE ACT—AS EVIDENTIAL ON—RATE DISCRIMINATION AND "UNFAIR COMPETITION"—CONCEPTS' EXTENT AND REACH AS VARYING WIDELY.

Unlike the relatively precise situation presented by rate discrimination, "unfair competition" was designed by Congress as a flexible concept with evolving content, and touches the greatest variety of unrelated activities.

STATUTES AND STATUTORY CONSTRUCTION—CONGRESSIONAL LEGISLATION—FEDERAL TRADE COMMISSION ACT—"UNFAIR METHODS OF COMPETITION IN COMMERCE"—EXTENT OF PROHIBITION—INTRASTATE COMMERCE—WHETHER EMBRACED BY—LOTTERY MERCHANDISING ORDER—VALIDITY AS INVOLVING UNFAIR INTRASTATE COMPETITION WITH OUT-OF-STATE SELLERS.

An order of the Federal Trade Commission commanding an Illinois candy manufacturer engaged in distributing its products in Illinois in "break and take" packages, which makes the amount purchaser receives dependent upon chance, to cease and desist from such practices, on ground that manufacturer was thereby enabled to compete unfairly with manufacturers outside of Illinois who could not indulge in such device because Commission had barred "break and [581] take" packages as "unfair methods of competition", was invalid because applying to practices not used in "interstate commerce", since the words "unfair methods of competition in commerce" which Trade Commission Act authorizes Commission to prevent cannot be read as though they meant "unfair methods of competition in any way affecting interstate commerce."

(The syllabus, with substituted captions, is taken from 61 S. Ct. 580)

On petition by Bunte Brothers, Inc., for review of order of Commission directing petitioner to cease and desist from certain unfair trade practices, and certiorari by Commission to review judgment of Circuit Court of Appeals for Seventh Circuit, 110 F. (2d) 412, 30 F. T. C. 1650, vacating and setting aside the order, affirmed.

Mr. Robert H. Jackson, Attorney General, and *Mr. Hugh B. Cox*, of Washington, D. C., for petitioner.

Mr. Theodore E. Rein, of Chicago, Ill., for respondent.

Mr. Justice DOUGLAS, Mr. Justice BLACK, and Mr. Justice REED dissenting.

Mr. Justice FRANKFURTER delivered the opinion of the Court.

The Federal Trade Commission found that Bunte Brothers, candy manufacturers in Illinois, sold products there in what the trade calls "break and take" packages, [350] which makes the amount the purchaser receives dependent upon chance; and that thereby it was enabled in the Illinois market to compete unfairly with manufacturers outside of Illinois who could not indulge in this device because the Trade Commission has barred "break and take" packages as an "unfair method of competition." Federal Trade Commission Act, § 5 (a), 38 Stat. 719, as amended, 15 U. S. C. § 45; *Fed. Trade Comm. v. Keppel & Bro.*, 291 U. S. 304. Deeming the "break and take" sales unfair methods of competition under § 5, even though the sales took place wholly within Illinois, the Commission forbade Bunte Brothers further use of the device. The circuit court of appeals set aside the order, 110 F. (2d) 412, and we brought the case here because the issue at stake presents an important aspect of the interplay of state and federal authority. 311 U. S. 624.

The scope of § 5 is in controversy.[1] That section, the court below held, authorizes the Commission to proceed only against business practices employed in interstate commerce. The Commission urges that its powers are not so restricted, that it may also proscribe unfair methods used in intrastate sales when these result in a handicap to interstate competitors.

While one may not end with the words of a disputed statute, one certainly begins there. "Unfair methods of competition in commerce" are the concern of § 5, and the Commission is "directed to prevent persons * * * from using unfair methods of competition

[1] "Sec. 5. (a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

"The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

in com[351]merce * * *." The "commerce" in which these methods are barred is interstate commerce.[2] Neither ordinary English speech nor the considered language of legislation would aptly describe the sale by Bunte [582] Brothers of its "break and take" assortments in Illinois as "using unfair methods of competition in [interstate] commerce. When in order to protect interstate commerce Congress has regulated activities which in isolation are merely local, it has normally conveyed its purpose explicitly. See, for example, National Labor Relations Act, §§ 2 (7), 9 (c), 10 (a), 49 Stat. 450, 453, 29 U. S. C. § 152 (7), 159 (c), 160 (a); Bituminous Coal Act, § 4-A, 50 Stat. 83, 15 U. S. C. § 834; Federal Employers' Liability Act, § 1, 35 Stat. 65, as amended, 53 Stat. 1404, 45 U. S. C. § 51. To be sure, the construction of every such statute presents a unique problem in which words derive vitality from the aim and nature of the specific legislation. But bearing in mind that in ascertaining the scope of congressional legislation a due regard for a proper adjustment of the local and national interests in our federal scheme must always be in the background, we ought not to find in § 5 radiations beyond the obvious meaning of language unless otherwise the purpose of the Act would be defeated. *Minnesota Rate Cases*, 230 U. S. 352, 398–412.

That for a quarter century the Commission has made no such claim is a powerful indication that effective enforcement of the Trade Commission Act is not dependent [352] on control over intrastate transactions.[3] Authority actually granted by Congress of course cannot evaporate through lack of administrative exercise. But just as established practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred. See

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[2] "Sec. 4. The words defined in this section shall have the following meaning when found in this Act, to wit:

" 'Commerce' means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any state or foreign nation, or between the District of Columbia and any State or Territory or foreign nation."

[3] The Commission makes no claim of a contrary administrative practice. The cases which it cites in no way mitigate what is stated in the text of the opinion. (1) Counsel for the Commission apparently argued for recognition of the power claimed here in Canfield Oil Co. v. Fed. Trade Comm., 274 Fed. 571, but the Commission had made no findings of discrimination against commerce and had only found that the Oil Company was engaged in commerce. (2) The jurisdiction sustained in Chamber of Commerce of Minneapolis v. Fed. Trade Comm., 13 F. (2d) 673, was very different from that claimed here. It rested on the fact that the Chamber conducted a market for grain in the current of interstate commerce. See Chicago Board of Trade v. Olsen, 262 U. S. 1, and cases cited. (3) The order of the Commission reviewed in California Rice Industry v. Fed. Trade Comm., 102 F. (2d) 716, resulted from proceedings instituted more than a year after this proceeding against Bunte Brothers had begun.

Norwegian Nitrogen Co. v. *United States*, 288 U. S. 294, 315. This practical construction of the Act by those entrusted with its administration is reinforced by the Commission's unsuccessful attempt in 1935 to secure from Congress an express grant of authority over transactions "affecting" commerce in addition to its control of practices in commerce. S. Rep. No. 46, 74th Cong., 1st Sess. These circumstances are all the more significant in that during the whole of the Commission's life the so-called *Shreveport* doctrine operated in the regulatory field committed to the Interstate Commerce Commission. And it is that doctrine which gives the contention of the Trade Commission its strongest support.

[353] Translation of an implication drawn from the special aspects of one statute to a totally different statute is treacherous business. The Interstate Commerce Act and the Federal Trade Commission Act are widely disparate in their historic settings, in the enterprises which they affect, in the range of control they exercise, and in the relation of these controls to the func[583]tioning of the federal system. We need not at this late day rehearse the considerations that led to the *Shreveport* decision. *Houston & Texas Ry.* v. *United States*, 234 U. S. 342. The nub of it, in the language of Chief Justice Taft, lay in the relation between intrastate and interstate railroad traffic: "Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them." *Wisconsin R. R. Comm.* v. *C. B. & Q. R. R.*, 257 U. S. 563, 588. And so when the Interstate Commerce Commission found that the intrastate rates of a carrier subject to the Act in effect operated as a discrimination against its interstate traffic, this Court sustained the power of the Commission to bring the two rates into harmonious relation and thereby to terminate the unlawful discrimination. Congress in 1920 revised the Interstate Commerce Act and explicitly confirmed this power of the Commerce Commission. 41 Stat. 484, 49 U. S. C. § 13 (4).

There is the widest difference in practical operation between the control over local traffic intimately connected with interstate traffic and the regulatory authority here asserted. Unlike the relatively precise situation presented by rate discrimination, "unfair competition" was designed by Congress as a flexible concept with evolving content. *Fed. Trade Comm.* v. *Keppel & Bro.*, *supra*, at 311–312. It touches the greatest variety of unrelated activities. The Trade Commission in its Report [354] for 1939 lists as "unfair competition" thirty-one diverse types of business practices which run the gamut from

bribing employees of prospective customers to selling below cost for hindering competition.[4] The construction of § 5 urged by the Commission would thus give a federal agency pervasive control over myriads of local businesses in matters heretofore traditionally left to local custom or local law. Such control bears no resemblance to the [355] strictly confined authority growing out of railroad rate discrimination. An inroad upon local conditions and local standards of such far-reaching import as is involved here, ought to await a clearer mandate from Congress. The problem now before us is very different from that which was recently presented by *United States* v. *F. W. Darby Lumber Co.*, 312 U. S. 100, decided February 3, 1941. We had [584] there to consider the full scope of the constitutional power of Congress under the Commerce Clause in relation to the subject matter of the Fair Labor Standards Act. This case presents the narrow question of what Congress did, not what it could do. And we merely hold that to read "unfair methods of competition in [interstate] commerce" as though it meant "unfair methods of competition in any way affecting interstate commerce", requires, in view of all the relevant considerations, much clearer manifestation of intention than Congress has furnished.

Affirmed.

Mr. Justice DOUGLAS, dissenting.

In my opinion the judgment should be reversed.

The Commission found that respondent's "use of chance assortments in the sale and distribution of its candies in Illinois has a

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[4] Report, pp. 8 3,88. And see these additional examples (pp. 83, 85, 89).

"6. Making false and disparaging statements respecting competitors' products and business, in some cases under the guise of ostensibly disinterested and specially informed sources or through purported scientific, but in fact misleading, demonstrations or tests; and making false and misleading representations with respect to competitors' products, such as that seller's product is competitor's, and through use of such practices as deceptive simulation of competitor's counter-display catalogs or trade names; and that competitor's business has been discontinued, and that seller is successor thereto or purchaser and owner thereof."

"10. Selling rebuilt, second-hand, renovated, or old products or articles made from used or second-hand materials as and for new."

"19. Using containers ostensibly of the capacity customarily associated in the mind of the general purchasing public with standard weights or quantities of the product therein contained, or using such standard containers only partially filled to capacity, so as to make it appear to the purchaser that he is receiving the standard weight or quantity."

"30. Failing and refusing to deal justly and fairly with customers in consummating transactions undertaken, through such practices as refusing to correct mistakes in filling orders, or to make promised adjustments or refunds, and retaining, without refund, goods returned for exchange or adjustment, and enforcing, notwithstanding agents' alterations, printed terms of purchase contracts, and exacting payments in excess of customers' commitments."

"31. Shipping products at market prices to its customers or prospective customers or to the customers or prospective customers of competitors without an order and then inducing or attempting by various means to induce the consignees to accept and purchase such consignments."

direct and powerful burdensome effect upon interstate commerce in candies from other states to the State of Illinois, and gives respondent an undue and unreasonable preference over competitors located in other states." The validity of that finding and of the Commission's conclusion that respondent's practices constitute unfair methods of competition are not in issue. The only question presented by this petition for certiorari is whether respondents' practices constitute unfair methods of competition "in commerce" within the meaning of § 5 (a) of the Federal Trade Commission Act.

[356] I think they do.

Unfair competition involves not only an offender but also a victim. Here some of the victims of the unfair methods of competition are engaged in interstate commerce. The fact that the acts of the offender are intrastate is immaterial. The purpose of the Act is to protect interstate commerce against specified types of injury. So far as the jurisdiction of the Commission is concerned, it is the existence of that injury to interstate commerce not the interstate or intrastate character of the conduct causing the injury which is important. An unfair method of competition is "in" interstate commerce not only when it has an interstate origin but also when it has a direct interstate impact. Respondent is "using" unfair methods of competition "in" interstate commerce when the direct effect of its conduct is to burden, stifle, or impair that commerce.

Under the Sherman Act (26 Stat. 209) a contract or conspiracy may be "in restraint of trade or commerce among the several States" even though the acts or conduct are intrastate. *Swift & Co.* v. *United States*, 196 U. S. 375, 397; *United States* v. *Patten*, 226 U. S. 525, 541–543; *Standard Oil Co.* v. *United States*, 283 U. S. 163, 168–169. Sec. 5 of the Federal Trade Commission Act is "supplementary" to the Sherman Act. *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, 647. Like the Sherman Act it seeks "to protect the public from abuses arising in the course of competitive interstate and foreign trade. * * * The paramount aim of the act is the protection of the public from the evils likely to result from the destruction of competition or the restriction of it in a substantial degree." *Federal Trade Commission* v. *Raladam Co.*, *supra*, pp. 647–648. And as this Court said in *Federal Trade Commission* v. *Beech-Nut Packing Co.*, 257 U. S. 441, 453, the declaration of public policy contained in the Sherman Act is "to be considered in determining what are unfair methods of competition, which [357] the Federal Trade Commission is empowered to condemn and suppress." For the Federal Trade Commission Act "undoubtedly was aimed at all the familiar methods of law violation

which prosecutions under the Sherman Act had disclosed." *Federal Trade Commission* v. *Keppel & Bro.*, 291 U. S. 304, 310.

That history, of course, does not give us license to disregard plain and unambiguous limitations on the power of the Commission. But it does admonish us to construe one of a series of legislative acts [585] dealing with a common or related problem in light of the integrated statutory scheme. See *United States* v. *Hutcheson*, 312 U. S. 219, decided February 3, 1941. It warns us not to whittle away administrative power by resolving an ambiguity against the existence of that power where the full arsenal of that power is necessary to cope with the evil at hand. The evil here is direct, injurious discrimination against interstate commerce. The Commission has issued orders against some 120 of respondent's competitors prohibiting them from selling chance assortments of candy in interstate commerce. Under this decision respondent may continue to use this same unfair method of competition to increase its business at the expense of those who sell in interstate commerce and who are not free to employ the same methods in self-defense. I think the Act, an exercise by Congress of its commerce power, should be interpreted to protect interstate commerce not to permit discrimination against it.

Such an approach was used in the *Shreveport* case (234 U. S. 342) to give the Interstate Commerce Commission control over intrastate rates which injuriously affected, through an unreasonable discrimination, traffic that was interstate. That result was reached though the Act expressly denied the Commission any jurisdiction where the "transportation" was "wholly within one State". This Court said (234 U. S. at p. 358) that those [358] words had "appropriate reference to exclusively intrastate traffic, separately considered; to the regulation of domestic commerce, as such. The powers conferred by the act are not thereby limited where interstate commerce itself is involved." The interrelation between the intrastate and interstate activities in the instant case is hardly less intimate than in the *Shreveport* case. The fact that the nexus here is economic and not physical is inconsequential. In this case as in the other the problem is the existence of administrative authority to provide effective protection of interstate commerce against discrimination. In the *Shreveport* case statutory doubts were resolved so as to strengthen the administrative process even against the claim that thereby the state authorities would be "shorn of those powers which alone can justify their existence." Similar arguments should not deter us from being tolerant of an asserted power, admittedly constitutional, to deal effectively with the realities of economic interdependence.

The fact that a clarifying amendment to the Act was sought which would have removed the doubts as to the meaning of "in commerce" is not material except to the extent that it shows that doubts existed. It does not aid in resolving those doubts. To be sure, recent statutes dealing with other fields have removed such doubts by explicit provisions. But they are of little aid in interpreting an earlier act in its own legislative setting. See *United States* v. *Stewart*, 311 U. S. 60, 69. And as to the charge that for a quarter of a century the Commission made no claim to such a power, two answers may be made. In the first place, as early as 1921, the Commission urged that the doctrine of the *Shreveport* case permitted an interpretation of the Act which would give it control over certain intrastate activities. *Canfield Oil Co.* v. *Federal Trade Commission*, 274 Fed. 571; Hankin, Jurisdiction of the Federal Trade Commission, 12 Calif. [359] L. Rev. 179, 197, *et seq.* Although the question does not appear to have been definitely settled, in 1926 the Commission received some support for its view. See *Chamber of Commerce* v. *Federal Trade Commission*, 13 F. (2d) 673, 684. Cf. *American Can Co.* v. *Ladoga Canning Co.*, 44 F. (2d) 763, 770–771. But in 1939 that power was denied. *California Rice Industry* v. *Federal Trade Commission*, 102 F. (2d) 716, 723. Non-use of the asserted power clearly cannot be inferred from that record. In the second place, it would not be relevant if this power did lay dormant for years. Mere non-use does not subtract from power which has been granted. The host of practical reasons which may defer exhaustion of administrative powers lies in the realm of policy. From that delay we can hardly infer that the need did not or does not exist.

Mr. Justice BLACK and Mr. Justice REED join in this dissent.

FASHION ORIGINATORS' GUILD OF AMERICA, INC., ET AL. v. FEDERAL TRADE COMMISSION[1]

No. 537

(Supreme Court. Argued Feb. 10, 1941. Decided, Mar. 3, 1941)

UNFAIR METHODS OF COMPETITION—SHERMAN ANTITRUST AND CLAYTON ACTS' PROHIBITIONS—CONCERT OF ACTION—DEALING BY MANUFACTURERS AND AFFILIATES, CONDITIONED ON EXCLUSION DESIGN COPIES AND COPYISTS.

Where textile manufacturers, garment manufacturers and their affiliates adopted a scheme under which textiles were to be sold to garment manufacturers only upon the condition that buyers would not use or deal in tex-

[1] Reported in 312 U. S. 457, 61 S. Ct. 703. For cases before Commission, *see* 28 F. T. C. 430, 31 F. T. C. 1837.

tiles which had been copied from designs of textile manufacturing members of the combination and garment manufacturers would sell to retailers only on condition that the retailers would not use or deal in copied garment designs, conclusion of Federal Trade Commission that the practice constituted an "unfair method of competition" within prohibition of the Sherman Anti-Trust Act and the Clayton Act was authorized. (Sherman Anti-Trust Act, 15 U. S. C. A. sec. 1 et seq.; Clayton Act, 15 U. S. C. A. sec. 12 et seq.; Federal Trade Commission Act, 15 U. S. C. A. sec. 41 et seq.)

RESTRAINT OF TRADE—SHERMAN ANTITRUST ACT—CONCERT OF ACTION—DEALING BY MANUFACTURERS AND AFFILIATES, CONDITIONED ON EXCLUSION DESIGN COPIES AND COPYISTS—AS VIOLATION.

Where textile manufacturers, garment manufacturers and their affiliates adopted a scheme under which textiles were to be sold to garment manufacturers only upon the condition that the buyers would not use or deal in textiles which had been copied from designs of textile manufacturing members of the combination and garment manufacturers would sell to retailers only upon condition that the retailers would not use or deal in copied garment designs, the scheme violated the Sherman Anti-Trust Act.

RESTRAINT OF TRADE—SHERMAN ANTITRUST ACT—CONCERT OF ACTION—WHERE MANUFACTURERS AND AFFILIATES' COMBINATION, IN REALITY, EXTRA-GOVERNMENTAL AGENCY, PRESCRIBING RULES FOR REGULATION AND RESTRAINT OF INTERSTATE COMMERCE, ETC.

Where textile manufacturers, garment manufacturers and their affiliates combined and adopted a scheme for sale of textiles, and the combination was in reality an extra-governmental agency which prescribed rules for the regulation and restraint of interstate commerce and provided extra-judicial tribunals for the determination and punishment of violators, the Sherman Anti-Trust Act was violated.

RESTRAINT OF TRADE—SHERMAN ANTITRUST ACT—CONCERT OF ACTION—DEALING BY MANUFACTURERS AND AFFILIATES, CONDITIONED ON EXCLUSION DESIGN COPIES AND COPYISTS—IF COMPLETE MONOPOLY NOT YET ACHIEVED.

Where textile manufacturers, garment manufacturers and their affiliates adopted a scheme under which textiles were to be sold to garment manufacturers only upon the condition that the buyers would not use or deal in textiles which had been copied from designs of textile manufacturing members of the combination and garment manufacturers would sell to retailers only upon condition that the retailers would not use or deal in copied garment designs, fact that the combination had not yet achieved a complete monopoly was not determinative in considering the policy of the Sherman Anti-Trust Act.

RESTRAINT OF TRADE—SHERMAN ANTITRUST AND CLAYTON ACTS—CONCERT OF ACTION—MANUFACTURERS' AND AFFILIATES' RESTRICTIVE SCHEME FOR SALE OF PRODUCT—IF PRICE FIXING OR REGULATION, PRODUCTION ALLOCATION OR LIMITATION, OR RESULTING DETERIORATION IN QUALITY, NOT FOUND.

Where textile manufacturers, garment manufacturers and their affiliates adopted a scheme for sale of textiles, fact that Federal Trade Commission did not find that combination fixed or regulated prices, parceled out of limited production, or brought about a deterioration in quality, did not

establish that the combination was not contrary to the policy of the Sherman Anti-Trust Act and the Clayton Act.

FEDERAL TRADE COMMISSION ACT—SCOPE AND PURPOSE—COMBINATIONS POTENTIALLY COMPETITIVELY HARMFUL—PRICE, PRODUCTION, QUALITY, AND OTHER TRADE RESTRAINTS AND PRACTICES.

[704] The object of the Federal Trade Commission Act was to reach not merely in their fruition but also in their incipiency combinations which could lead to regulation of prices, parceling out of limitation of production, deterioration in quality and other trade restraints and practices deemed undesirable.

RESTRAINT OF TRADE—SHERMAN ANTITRUST AND CLAYTON ACTS—CONCERT OF ACTION—ESSENTIALS TO VIOLATION OF LAWS' POLICY—WHETHER PRICE FIXING INTENT INCLUDED IN.

A conspiracy to fix prices is illegal, but an intent to increase prices is not an ever-present essential of conduct amounting to a violation of the policy of the Sherman Anti-Trust Act and the Clayton Act.

RESTRAINT OF TRADE—SHERMAN ANTITRUST AND CLAYTON ACTS—CONCERT OF ACTION—ESSENTIALS TO VIOLATION OF LAWS' POLICY—IF PRICES TEMPORARILY OR EVEN PERMANENTLY REDUCED.

A monopoly contrary to policies of the Sherman Anti-Trust Act and the Clayton Act can exist even though combination may temporarily or even permanently reduce price of articles manufactured or sold.

RESTRAINT OF TRADE—SHERMAN ANTITRUST AND CLAYTON ACTS—CONCERT OF ACTION—MANUFACTURERS' AND AFFILIATES' RESTRICTIVE SCHEME FOR SALE OF PRODUCT INVOLVING EXCLUSION DESIGN COPIES OR COPYISTS—WHERE WITHIN LAWS' POLICY OF PROHIBITION BY VIRTUE OF COMBINATION'S PURPOSE, POTENTIAL POWER, TENDENCY TO MONOPOLY, AND COMPETITIVE COERCION PRACTICED BY AND AVAILABLE TO COMBINATION—EVIDENCE PROFERRED TO JUSTIFY AS PROTECTION AGAINST EVILS OF DESIGN PIRACY—WHETHER REJECTION ERROR.

Where textile manufacturers, garment manufacturers and their affiliates adopted a scheme for sale of textiles and purpose of the combination, its potential power, its tendency to monopoly, the coercion it could and did practice upon rival method of competition, brought it within policy of prohibition declared by the Sherman Anti-Trust Act and Clayton Act, and therefore refusal of Federal Trade Commission to hear evidence that the practices of the combination were reasonable, and necessary to protect the manufacturer, laborer, retailer and consumer against the devastating evils growing from the pirating of original designs and had in fact benefited all four was not error, since the method pursued by the combination to accomplish its unlawful objects was immaterial.

RESTRAINT OF TRADE—SHERMAN ANTITRUST AND CLAYTON ACTS—CONCERT OF ACTION—DEALING BY MANUFACTURERS AND THEIR AFFILIATES, CONDITIONED ON EXCLUSION DESIGN COPIES OR COPYISTS—DEFENSES OR JUSTIFICATION—COPYING OF DRESS DESIGNS AS TORTIOUS—AS QUESTION OF STATE LAW AND NOT AVAILABLE.

Where textile manufacturers, garment manufacturers and their affiliates adopted a scheme under which textiles were to be sold to garment manufacturers only upon the condition that buyers would not use or deal in textiles which had been copied from designs of textile manufacturing members of the combination and garment manufacturers would sell to retailers only

upon condition that retailers would not use or deal in copied garment designs, unlawful combination could not be justified upon ground that systematic copying of dress designs was itself tortious or should be declared so by the Supreme Court, since whether given conduct is tortious is a "question of state law."

RESTRAINT OF TRADE—SHERMAN ANTITRUST AND CLAYTON ACTS—CONCERT OF ACTION—DEALING BY MANUFACTURERS AND AFFILIATES, CONDITIONED ON EXCLUSION DESIGN COPIES OR COPYISTS—WHERE VIOLATION AS REGULATION AND RESTRAINT OF INTERSTATE COMMERCE—DEFENSE OR JUSTIFICATION—DESIGN PIRACY EVILS AS OBJECT—VALIDITY.

Even if systematic copying of dress designs constituted a tort, that situation would not justify dress manufacturers in combining together to regulate and restrain interstate commerce in violation of federal law for purpose of combatting the evils growing from the pirating of original designs.

(Syllabus, with substituted captions, is taken from 61 S. Ct. 703)

In proceeding by Fashion Originators' Guild of America, Inc., and others against Commission to review judgment of Circuit Court of Appeals for Second Circuit, 114 F. (2d) 80, 31 F. T. C. 1837, affirming, with certain modifications, order of Commission, judgment affirmed.

Mr. Charles B. Rugg, of Boston, Mass., and *Mr. Milton C. Weisman*, of New York City, for petitioners.

Mr. Francis Biddle, Solicitor General, for the respondent.

[705] Mr. Justice BLACK delivered the opinion of the Court.

The Circuit Court of Appeals, with modifications not here challenged, affirmed a Federal Trade Commission decree ordering petitioners to cease and desist from certain practices found to have been done in combination and to constitute "unfair methods of competition" tending to monopoly.[1] Determination of the correctness of the decision below requires consideration of the Sherman, Clayton, and Federal Trade Commission Acts.[2]

[461] Some of the members of the combination design, manufacture, sell and distribute women's garments—chiefly dresses. Others are manufacturers, converters or dyers of textiles from which these garments are made. Fashion Originators' Guild of America (F. O. G. A.), an organization controlled by these groups, is the instrument through which petitioners work to accomplish the purposes condemned by the Commission. The garment manufacturers claim to

[1] 114 F. (2d) 80. Because of inconsistency between the holding below and that of the First Circuit Court of Appeals in Wm. Filene's Sons Co. v. Fashion Originators' Guild of America, 90 F. (2d) 556, we granted certiorari. 311 U. S. 641.

[2] 26 Stat. 209, 15 U. S. C. § 1 *et seq.*; 38 Stat. 730, 15 U. S. C. § 12 *et seq.*; 38 Stat. 717, 15 U. S. C. § 41 *et seq.*

be creators of original and distinctive designs of fashionable clothes for women, and the textile manufacturers claim to be creators of similar original fabric designs. After these designs enter the channels of trade, other manufacturers systematically make and sell copies of them, the copies usually selling at prices lower than the garments copied. Petitioners call this practice of copying unethical and immoral, and give it the name of "style piracy." And although they admit that their "original creations" are neither copyrighted nor patented, and indeed assert that existing legislation affords them no protection against copyists, they nevertheless urge that sale of copied designs constitutes an unfair trade practice and a tortious invasion of their rights. Because of these alleged wrongs, petitioners, while continuing to compete with one another in many respects, combined among themselves to combat and, if possible, destroy all competition from the sale of garments which are copies of their "original creations." They admit that to destroy such competition they have in combination purposely boycotted and declined to sell their products to retailers who follow a policy of selling garments copied by other manufacturers from designs put out by Guild members. As a result of their efforts, approximately 12,000 retailers throughout the country have signed agreements to "cooperate" with the Guild's boycott program, but more than half of these signed the [462] agreements only because constrained by threats that Guild members would not sell to retailers who failed to yield to their demands—threats that have been carried out by the Guild practice of placing on red cards the names of noncooperators (to whom no sales are to be made), placing on white cards the names of cooperators (to whom sales are to be made), and then distributing both sets of cards to the manufacturers.

The one hundred and seventy-six manufacturers of women's garments who are members of the Guild occupy a commanding position in their line of business. In 1936, they sold in the United States more than 38% of all women's garments wholesaling at $6.75 and up, and more than 60% of those at $10.75 and above. The power of the combination is great; competition and the demand of the consuming public make it necessary for most retail dealers to stock some of the products of these manufacturers. And the power of the combination is made even greater by reason of the affiliation of the National Federation of Textiles, Inc.—an organization composed of about one hundred textile manufacturers, converters, dyers and printers of silk and rayon used in making women's garments. These textile members have agreed to sell their products only to those garment manufacturers who have in turn agreed to sell only to cooperating retailers.

The Guild maintains a Design Registration Bureau for garments, and the Tex[706]tile Federation maintains a similar Bureau for textiles. The Guild employs "shoppers" to visit the stores of both cooperating and non-cooperating retailers, "for the purpose of examining their stocks, to determine and report as to whether they contain * * * copies of registered designs * * *." An elaborate system of trial and appellate tribunals exists, for the determination of whether a given garment is in fact a copy of [463] a Guild member's design. In order to assure the success of its plan of registration and restraint, and to ascertain whether Guild regulations are being violated, the Guild audits its members books. And if violations of Guild requirements are discovered, as, for example, sales to red-carded retailers, the violators are subject to heavy fines.[3]

In addition to the elements of the agreement set out above, all of which relate more or less closely to competition by so-called style copyists, the Guild has undertaken to do many things apparently independent of and distinct from the fight against copying. Among them are the following: the combination prohibits its members from participating in retail advertising; regulates the discount they may allow; prohibits their selling at retail; cooperates with local guilds in regulating days upon which special sales shall be held; prohibits its members from selling women's garments to persons who conduct businesses in residences, residential quarters, hotels or apartment houses; and denies the benefits of membership to retailers who participate with dress manufacturers in promoting fashion shows unless the merchandise used is actually purchased and delivered.

If the purpose and practice of the combination of garment manufacturers and their affiliates runs counter to the public policy declared in the Sherman and Clayton Acts, the Federal Trade Commission has the power to suppress it as an unfair method of competition.[4] From [464] its findings the Commission concluded that the petitioners, "pursuant to understandings, arrangements, agreements, combinations and conspiracies entered into jointly and severally" had prevented sales in interstate commerce, had "substantially lessened, hindered and suppressed" competition, and had tended "to create in themselves a monopoly." And paragraph 3 of the Clayton Act (15 U. S. C. § 14) declares "It shall be unlawful for any person engaged in commerce, * * * to * * * make a sale or contract for sale

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[3] In one instance a fine of $1,500 was imposed, and the Guild notified its membership that a fine of $5,000 would be assessed in case of future violation.

[4] Federal Trade Commission v. Beech-Nut Packing Co., 257 U. S. 441, 453–455. See 26 Stat. 209, 15 U. S. C. § 1 *et seq.*; 38 Stat. 730, 15 U. S. C. § 12 *et seq.*; 38 Stat. 717, 15 U. S. C. § 41 *et seq.* By 38 Stat. 734, 15 U. S. C. § 21, the Federal Trade Commission is expressively given authority to enforce the Clayton Act.

of goods, * * * on the condition, agreement, or understanding that the * * * purchaser thereof shall not use or deal in the goods, * * * of a competitor or competitors of the * * * seller, where the effect of such * * * sale, or contract for sale * * * may be to substantially lessen competition or tend to create a monopoly in any line of commerce." The relevance of this section of the Clayton Act to petitioners' scheme is shown by the fact that the scheme is bottomed upon a system of sale under which (1) textiles shall be sold to garment manufacturers only upon the condition and understanding that the buyers will not use or deal in textiles which are copied from the designs of textile manufacturing Guild members; (2) garment manufacturers shall sell to retailers only upon the condition and understanding that the retailers shall not use or deal in such copied designs. And the Federal Trade Commission concluded in the language of the Clayton Act that these understandings substantially lessened competition and tended to create a monopoly. We hold that the Commission, upon adequate and unchallenged findings, correctly concluded that this practice constituted an unfair method of competition.[5]

[465] Not only does the plan in the respects above discussed thus conflict with the principles of the Clayton Act; the findings of the Commission bring petitioners' combination in its entirety well within the in[707]hibition of the policies declared by the Sherman Act itself. Section 1 of that Act makes illegal every contract, combination or conspiracy in restraint of trade or commerce among the several states; Section 2 makes illegal every combination or conspiracy which monopolizes or attempts to monopolize any part of that trade or commerce. Under the Sherman Act "competition not combination, should be the law of trade." *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115, 129. And among the many respects in which the Guild's plan runs contrary to the policy of the Sherman Act are these: it narrows the outlets to which garment and textile manufacturers can sell and the sources from which retailers can buy (*Montague & Co.* v. *Lowry*, 193 U. S. 38, 45; *Standard Sanitary Manufacturing Co.* v. *United States*, 226 U. S. 20, 48–49); subjects all retailers and manufacturers who decline to comply with the Guild's program to an organized boycott (*Eastern States Retail Lumber Dealers' Association* v. *United States*, 234 U. S. 600, 609–611); takes away the freedom of action of members by requiring each to reveal to the Guild the intimate details of their individual affairs (*United States* v. *American Linseed Oil Co.*, 262 U. S. 371, 389); and has both as its necessary tendency and as its pur-

[5] Cf. Federal Trade Commission *v.* R. F. Keppel & Bro., 291 U. S. 304, 314; Standard Fashion Co. *v.* Magrane-Houston Co., 258 U. S. 346, 357.

pose and effect the direct suppression of competition from the sale of unregistered textiles and copied designs (*United States* v. *American Linseed Oil Co.*, *supra*, at 389). In addition to all this, the combination is in reality an extra-governmental agency, which prescribes rules for the regulation and restraint of interstate commerce, and provides extra-judicial tribunals for determination and punishment of violations, and thus "trenches upon the power of the national legislature and violates the statute." [466] *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 242.

Nor is it determinative in considering the policy of the Sherman Act that petitioners may not yet have achieved a complete monopoly. For "it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition." *United States* v. *E. C. Knight Co.*, 156 U. S. 1, 16; *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 237. It was, in fact, one of the hopes of those who sponsored the Federal Trade Commission Act that its effect might be prophylactic and that through it attempts to bring about complete monopolization of an industry might be stopped in their incipency.[6]

Petitioners, however, argue that the combination cannot be contrary to the policy of the Sherman and Clayton Acts, since the Federal Trade Commission did not find that the combination fixed or regulated prices, parcelled out or limited production, or brought about a deterioration in quality. But action falling into these three categories does not exhaust the types of conduct banned by the Sherman and Clayton Acts. And as previously pointed out, it was the object of the Federal Trade Commission Act to reach not merely in their fruition but also in their incipiency combinations which could lead to these and other trade restraints and practices deemed undesirable. In this case, the Commission found that the combination exercised sufficient control and power in the women's garments and textile businesses "to exclude from the industry those manufacturers and distributors who do not conform to the rules and regulations of said respondents, and thus tend to [467] create in themselves a monopoly in the said industries." While a conspiracy to fix prices is illegal, an intent to increase prices is not an ever-present essential of conduct amounting to a violation of the policy of the Sherman and Clayton Acts; a monopoly contrary to their policies can exist even though a combination may temporarily or even permanently reduce the price of the articles [708] manufactured or sold. For as this Court has said, "Trade or commerce under those circumstances may nevertheless be badly and unfortunately restrained by

[6] Federal Trade Commission *v.* Raladam Co., 283 U. S. 643, 647. And see remarks of Senator Cummins, Chairman of the Committee which reported the bill, 51 Cong. Rec. 11455, quoted by Brandeis, J., in Federal Trade Commission *v.* Gratz, 253 U. S. 421, 435.

driving out of business the small dealers and worthy men whose lives have been spent therein, and who might be unable to readjust themselves to their altered surroundings. Mere reduction in the price of the commodity dealt in might be dearly paid for by the ruin of such a class, and the absorption of control over one commodity by an all-powerful combination of capital." [7]

But petitioners further argue that their boycott and restraint of interstate trade is not within the ban of the policies of the Sherman and Clayton Acts because "the practices of FOGA were reasonable and necessary to protect the manufacturer, laborer, retailer and consumer against the devastating evils growing from the pirating of original designs and had in fact benefited all four." The Commission declined to hear much of the evidence that petitioners desired to offer on this subject. As we have pointed out, however, the aim of petitioners' combination was the intentional destruction of one type of manufacture and sale which competed with Guild members. The purpose and object of this combination, its potential power, its tendency to monopoly, the coercion it could and did practice upon a rival method of competition, all brought it within the policy of the prohibition [468] declared by the Sherman and Clayton Acts. For this reason, the principles announced in *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, and *Sugar Institute* v. *United States*, 297 U. S. 553, have no application here. Under these circumstances it was not error to refuse to hear evidence, for the reasonableness of the methods pursued by the combination to accomplish its unlawful object is no more material than would be the reasonableness of the prices fixed by unlawful combination. Cf. *Thomsen* v. *Cayser*, 243 U. S. 66, 85; *United States* v. *Trenton Potteries Co.*, 273 U. S. 392, 398; *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 212–224. Nor can the unlawful combination be justified upon the argument that systematic copying of dress designs is itself tortious, or should now be declared so by us. In the first place, whether or not given conduct is tortious is a question of state law, under our decision in *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64. In the second place, even if copying were an acknowledged tort under the law of every state, that situation would not justify petitioners in combining together to regulate and restrain interstate commerce in violation of federal law. And for these same reasons, the principles declared in *International News Service* v. *Associated Press*, 248 U. S. 215, cannot serve to legalize petitioners' unlawful combination. The decision below is accordingly

Affirmed.

[7] *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 323.

MILLINERY CREATORS' GUILD, INC., ET AL. v. FEDERAL TRADE COMMISSION[1]

No. 251

(Supreme Court. Argued Feb. 7–10, 1941. Decided Mar. 3, 1941)

UNFAIR METHODS OF COMPETITION—CONCERT OF ACTION—DEALING BY MANUFACTURERS AND DESIGNERS INDUCING RETAILERS' ABSTENTION FROM PURCHASE PIRATED DESIGNS REGISTERED WITH FORMERS' ASSOCIATION.

Where members of an association were designers and manufacturers of women's hats and association adopted plan to combat "style piracy" by inducing retailers to refrain from purchasing hats which were piracies of designs registered with the association, order of Federal Trade Commission directing the members to cease and desist from carrying out the plan on ground that [709] it constituted "unfair method of competition" was authorized.

(Syllabus, with substituted caption, is taken from 61 S. Ct. 708)

In proceeding by Millinery Creators' Guild, Inc. (formerly Millinery Quality Guild, Inc.), and others, against Commission to review judgment of Circuit Court of Appeals for Second Circuit, 109 F. (2d) 175, 30 F. T. C. 1619, judgment affirmed.

Mr. Lowell M. Birrell and *Mr. Francis L. Driscoll*, both of New York City, for petitioners.

Mr. Francis Biddle, Solicitor General, for respondent.

Mr. Justice BLACK delivered the opinion of the Court.

This case presents virtually the same issues as *Fashion Originators' Guild of America, Inc.* v. *Federal Trade Commission*, 312 U. S. 457 [p. 1856, this volume] this day decided. Here, as in that case, the Circuit Court of Appeals affirmed a Federal Trade Commission decree ordering the petitioners to cease and desist from certain practices found to have been done in combination and to constitute "unfair methods of competition" tending to monopoly.[2]

[472] The members of the Guild involved in this case are designers and manufacturers of women's hats. Their Guild operates a plan modelled after that of the Fashion Originators' Guild of America, Inc.

It was stipulated by the parties that "The capacity, tendency, purpose and result of the plan . . . and the acts and practices performed thereunder . . . have been, and now are, to restrain com-

[1] Reported in 312 U. S. 469, 61 S. Ct. 708. For case before Commission, *see* 24 F. T. C. 1136, 30 F. T. C. 1619, 31 F. T. C. 1793 (footnote).

[2] 109 F. (2d) 175.

merce by eliminating manufacturers of stylish hats . . . as to the outlets of their products and by limiting the retail dealers . . . as to their source of supply, and to deprive the public of the benefits, if any, of competition as to price or otherwise among retailers of stylish hats in this respect . . . ." Pursuant to the evidence and to the stipulation containing this statement, the Commission found that the effect of the plan was "unduly to hinder competition and to create monopoly in the sale of women's hats in interstate commerce."

The respects in which the plan of the Millinery Creators' Guild differs from that of the Fashion Originators' Guild are not material, and need not be set out in detail. Nor need the findings of the Commission be enumerated here. The Commission did find that the Millinery Creators' Guild had tended to hinder competition and create monopoly "By depriving the public of the benefits of normal price competition among retailers of stylish hats for women", a finding not made in the other case, but the presence or absence of such a finding is not determinative here. On the authority of *Fashion Originators' Guild of America, Inc.* v. *Federal Trade Commission*, the decision below is

Affirmed.

CHANEL, INC. v. FEDERAL TRADE COMMISSION [1]

(Circuit Court of Appeals, Second Circuit. Mar. 10, 1941)

Order, in accordance with stipulation, as below set forth, dismissing petition to review order of Commission in Docket 3096, 29 F. T. C. 1022, 1030, requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of perfumes, powders, cosmetics and other toilet preparations, to cease and desist from (1) representing, through use of term "Paris, France" or any other terms, words, etc., indicative of French or other foreign origin of such products, or in any manner, that perfumes, etc., made or compounded in the United States are made or compounded in France or in any other foreign country, subject to proviso, in order set forth, as to country of origin of various ingredients; (2) using any French or other foreign terms, etc. (except as in prohibition (3) provided), to designate, etc., perfumes, etc., made or compounded in the United States, unless English translation or equivalent appears in connection therewith as in order provided; and (3) using terms "Glamour de Chanel," "Jasmin de Chanel," "Gardenia de Chanel," "Cuir de Russie," or other French or foreign words, etc., for perfumes, etc., made or compounded in the United States, without stating in connection therewith, as in order described, that products in question are made or compounded therein.

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[1] Not reported in Federal Reporter. For case before Commission, *see* 29 F. T. C. 1022.

Mr. Mark Eisner, of New York City, for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, of Washington, D. C., for the Commission.

STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the petition for review in the above entitled proceeding filed in the office of the Clerk of the Circuit Court of Appeals for the Second Circuit on the 30th day of November, 1939, of the order of the Federal Trade Commission, dated September 27, 1939, be dismissed without prejudice, and that the Clerk of the United States Circuit Court of Appeals for the Second Circuit be and he is hereby authorized to enter the case dismissed. Dated, March 5, 1941.

(S) MARK EISNER
Attorney for Petitioner.
(S) W. T. KELLEY,
Attorney for Respondent.

So Ordered:
(S) D. E. ROBERTS, *Clerk.*
MARCH 10, 1941.

FEDERAL TRADE COMMISSION v. BIDDLE PURCHASING COMPANY[1]

(Circuit Court of Appeals, Second Circuit. Mar. 13, 1941)

Decision, in proceeding by Commission to adjudge respondent company in contempt for violation of court's order in 96 F. (2d) 687, 26 F. T. C. 1511, which affirmed Commission's order directing respondent to cease and desist from violating provisions of Subsec. 2 (c) of the Clayton Act, denying respondent's motion to dismiss the proceeding, and granting the Commission's motion to refer the cause to it as special master, etc.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Joseph J. Smith, Jr.*, and *Mr. John Darsey*, special attorneys, all of Washington, D. C., for the Commission.

Mr. Gilbert H. Montague, of New York City, for respondent.

Following prior per curiam decision of court on Jan. 18, 1941, 117 F. (2d) 29, (*see, ante*, p. 1840), granting respondent's motion, as therein set forth, to require the Commission to file a bill of particulars to the extent of particularizing at least one typical transaction to each

[1] Not reported in Federal Reporter. For case before Commission, *see* 25 F. T. C. 564.

subparagraph alleging violations of court's decree, and the filing of such bill by the Commission, court took further action by ordering, upon the Commission's motion that the cause be referred to the Federal Trade Commission "as special master to take evidence upon the question whether or not Biddle Purchasing Company has violated this Court's decree, and to report thereon to the Court, with the evidence taken", and by denying respondent's motion for dismissal of Commission proceeding. (Statement by editor.)

MENTHO-MULSION, INC. (FORMERLY M. L. CLEIN & COMPANY), AND MAX L. CLEIN AND SADIE B. CLEIN v. FEDERAL TRADE COMMISSION[1]

No. 9468

(Circuit Court of Appeals, Fifth Circuit. Mar. 21, 1941)

Order, by Circuit Judges Rufus E. Foster, Joseph C. Hutcheson, Jr., and Leon McCord, affirming Commission's order in Mentho-Mulsion, Inc., et al., Docket 3674, 30 F. T. C. 393, 400, and directing respondent, its officers, and respondent individuals and their respective agents, etc., to cease and desist from disseminating, etc., any advertisements, as in order set forth, which represent, directly or through implication, that petitioners' "Mentho-Mulsion" is a cure or remedy for coughs, etc., or that petitioners' "Malco Cold Tablets" will drive common colds out of the system, etc.; as therein in detail provided.

Mr. Clarence H. Calhoun, of Atlanta, Ga., for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. J. M. Russell*, special attorney, both of Washington, D. C., for the Commission.

DECREE

The petitioners herein, having filed with this Court on, to wit, March 19, 1940, their petition to review and set aside an order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of January 16, 1940, under the provisions of Section 5 of the Federal Trade Commission Act; and a copy of said petition having been served upon the respondent herein; and said respondent having thereafter certified and filed herein, as required by law, a transcript of the entire record in the proceeding lately pending before it, in which said order to cease and desist was entered, including all the evidence taken and the report and order of said

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[1] Not reported in Federal Reporter. For case before Commission, *see* 30 F. T. C. 393.

respondent; and the parties hereto having agreed that this proceeding may be terminated by the entry by this Honorable Court of a decree affirming said order to cease and desist, and commanding obedience to the terms thereof—

Now, therefore, it is hereby ordered, adjudged, and decreed, That the order to cease and desist entered by the Federal Trade Commission, respondent herein, under date of January 16, 1940, be, and the same hereby is, affirmed.

And it is hereby further ordered, adjudged, and decreed, That the petitioners Mentho-Mulsion, Incorporated (formerly M. L. Clein and Company), a corporation, and its officers, and Max L. Clein and Sadie B. Clein, individuals, and their respective agents, representatives, and employees, directly or through any corporate or other device, forthwith cease and desist from disseminating or causing to be disseminated any advertisement by means of the United States mails, or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of the medicinal preparations known as Mentho-Mulsion and Malco Cold Tablets, or any other medicinal preparation possessing substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or under any other name or names, or disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said medicinal preparations in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisements represent, directly or through implication:

1. That petitioners' preparation Mentho-Mulsion is a cure or remedy for coughs, or that it will stop cough spasms or that it will have any therapeutic value in the treatment of coughs due to physical disorders of a systemic character, or that it has any therapeutic value in the treatment of coughs in excess of providing temporary relief in cases of coughs due to common colds;

2. That petitioners' preparation Malco Cold Tablets will drive common colds out of the system or that said preparation constitutes a cure or remedy for colds or has any therapeutic value in the treatment thereof in excess of providing a palliative relief from some of the symptoms commonly encountered in colds.

And it is hereby further ordered, adjudged, and decreed, That the petitioners Mentho-Mulsion, Incorporated (formerly M. L. Clein and Company, a corporation, and its officers, and Max L. Clein and Sadie B. Clein, individuals, 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.

EDUCATORS ASSOCIATION, INC., ET AL. v. FEDERAL TRADE COMMISSION [1]

(Circuit Court of Appeals, Second Circuit. Mar. 24, 1941)

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—ORDERS' SCOPE—TRADE AND CORPORATE NAMES—BUSINESS OR PRIVATE PROFIT ENTERPRISE AS EDUCATIONAL UNDERTAKING—MODIFICATION PERMISSIVE OF CONTINUED USE—"COMMERCIAL PUBLISHERS", ETC., FOR USE WITH "EDUCATORS ASSOCIATION, INC."

"Educators Association, Inc.", a corporation publishing a school reference book called "The Volume Library", was required to use with its corporate name the words "Commercial Publishers of the Volume Library", in order that prospective purchasers would not be led to believe that corporation was an association of educators.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—ORDERS' SCOPE—TRADE AND CORPORATE NAMES—BUSINESS OR PRIVATE PROFIT ENTERPRISE AS EDUCATIONAL UNDERTAKING—MODIFICATION PERMISSIVE OF CONTINUED USE—"COMMERCIAL DISTRIBUTORS", ETC., FOR USE WITH "EDUCATORS ASSOCIATION".

The sellers of school reference book known as "The Volume Library", doing business under the trade-name "Educators Association", were required to add to their trade-name the words "Commercial Distributors of the Volume Library", in order that prospective purchasers would not be led to believe that sellers were an association of educators.

(Syllabus, with substituted captions, is taken from 118 F. (2d) 562)

On petition for rehearing, petition denied.

Townsend, Kindleberger & Campbell, of New York City, for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, of Washington, D. C., *Mr. Martin A. Morrison*, assistant chief counsel, *Mr. William L. Pencke* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for the Commission.

Before SWAN, CHASE, and CLARK, Circuit Judges; CLARK, C. J., dissenting.

Per Curiam:

The parties having attempted unsuccessfully to agree upon the terms of a modification of the order as suggested in the opinion of

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[1] Reported in 118 F. (2d) 562. For case before Commission, *see* 28 F. T. C. 1006. For prior decisions, *see* 30 F. T. C. 1614 and 1658.

this court on the first petition for rehearing, the Commission has filed another such petition. We need not consider whether or not this second petition has been filed in compliance with our rules. It does, at least, serve to inform us that the time has come when we should ourselves modify the order in accordance with the views expressed in our opinion. It is accordingly modified to provide that the words "Commercial Publishers of the Volume Library" be used with the name of the corporation in carrying on its business and be so used that the nature of its business will be thus revealed. In the same way, and for the same purpose, petitioners who use the trade-name "Educators Association" shall add to it the words, "Commercial Distributors of the Volume Library."

In all other respects, our former decision is affirmed.

Petition denied.

CLARK, *Circuit Judge* (dissenting):

I think the language herein suggested is inadequate to counteract the misleading implication from petitioners' name and style that they are an association of educators. Compare *H. N. Heusner & Son* v. *Federal Trade Commission*, 3 Cir., 106 F. (2d) 596; *El Moro Cigar Co.* v. *Federal Trade Commission*, 4 Cir., 107 F. (2d) 429. Some such expression as "(A Private Commercial Enterprise) Publisher of The Volume Library" should be used with the name of the corporation in carrying on its business, and petitioners, who use the trade name "Educators Association," should add to it the words: "A Private Commercial Enterprise of Sales Agents of The Volume Library."

ALBERTY v. FEDERAL TRADE COMMISSION[1]

No. 9273

(Circuit Court of Appeals, Ninth Circuit. Mar. 26, 1941)

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—FINDINGS OF COMMISSION—WHERE SUPPORTED BY EVIDENCE.

In proceedings to set aside cease and desist order of Federal Trade Commission, findings of Commission, if supported by evidence, are conclusive. (Federal Trade Commission Act, sec. 5 (c), 15 U. S. C. A. sec. 45 (c).)

EVIDENCE—METHODS, ACTS AND PRACTICES—QUALITIES OR PROPERTIES OF PRODUCT—MEDICINAL AND HEALTH FOODS AND PREPARATIONS.

Evidence sustained finding of Federal Trade Commission that petitioner was making false representations as to medicinal value of certain preparations, so as to authorize cease and desist order. (Federal Trade Commission Act, secs. 1–11, 5 (c), 15 U. S. C. A., secs. 41–51, 45 (c).)

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[1] Reported in 118 F. (2d) 669. For case before Commission, *see* 29 F. T. C. 210. Rehearing denied, April 21, 1941. Petition for certiorari filed in Supreme Court, May 26, 1941.

EVIDENCE—FINDINGS AND ORDERS, ON REVIEW—EXPERT TESTIMONY—WHERE CONFLICTING—RESOLVING OF.

In proceedings to review cease and desist order of Federal Trade Commission directed against petitioner who was allegedly making false representations as to medicinal value of certain preparations which she was selling in interstate commerce, conflicts in testimony of expert were for the Commission, not Circuit Court of Appeals, to resolve.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—METHODS, ACTS AND PRACTICES—QUALITIES OR PROPERTIES OF PRODUCT—MEDICINAL AND HEALTH PRODUCTS AND PREPARATIONS—COMPETITIVE INJURY—DETERMINATION OF—WHETHER PREREQUISITE.

In proceeding to review cease and desist order of Federal Trade Commission directed against petitioner who allegedly was making false representation as to medicinal value of certain preparation which she was selling in interstate commerce, whether or to what extent petitioner's competitors have actually suffered as result of petitioner's unfair methods of competition was not required to be determined.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—CONFIDENTIAL REPORTS—PERMITTED USE TO REFRESH BY COMMISSION WITNESS, WHERE INSPECTION AND USE DENIED PETITIONER—IF PREJUDICE NOT SHOWN.

In proceeding to review cease and desist order of Federal Trade Commission, no prejudice was shown in Commission's permitting its witness to refresh his memory from an alleged confidential report to Commission without permitting petitioner to inspect and use report at trial, where it did not appear that confidential report was used by Commission in reaching its conclusion.

(Syllabus, with substituted captions, is taken from 118 F. (2d) 669)

On petition to set aside cease and desist order of Commission, order affirmed.

[670] *Mr. W. I. Gilbert, Jr.*, *Mr. W. I. Gilbert*, and *Mr. Jean Wunderlich*, all of Los Angeles, Cal., for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. Reuben J. Martin* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for the Commission.

Before MATHEWS, HANEY, and HEALY, Circuit Judges.

MATHEWS, *Circuit Judge:*

This is a petition to review an order of the Federal Trade Commission requiring petitioner, Adah Alberty, to cease and desist from making certain representations which the Commission held to constitute unfair methods of competition in commerce, within the meaning of the Federal Trade Commission Act, 15 U. S. C. A. §§ 41–51.

Petitioner's brief specifies as error,[1] not the entire order, but only so much thereof as requires petitioner to cease and desist from representing:

That the preparations called Alberty's Food Regular and Alberty's Food Instant (new style), or any preparation similarly composed, "render milk more readily digestible, constitute a competent remedy, cure or treatment for cancer or ulcer, or have any therapeutic or medicinal value;"

That the preparation called Alberty's Laxative Blend, or any preparation similarly composed, "has any therapeutic value or affects the muscles of the intestines, other than that the senna contained in the preparation is a cathartic;"

That the preparations called Alberty's Phosphate Pellets and Alberty's No. 3 Tablets, or any preparation similarly composed, "have any therapeutic value;"

That the preparation called Cheno Combination Tablets, or any preparation similarly composed, "contains any ingredient which would have an influence on fat metabolism, or that the use of said preparation will cause any weight reduction other than reduction due to the laxative properties of said preparation, or that said preparation has a therapeutic value;"

That the preparation called Cheno Tea, or any preparation similarly composed, "contains any ingredient which will cause or produce any weight reduction, or that by the use thereof the user will bring about a reduction in weight, or that said preparation has any effect on the metabolism of fat, or that it has any therapeutic value other than that of a mild laxative."

The order is based on findings to the effect that petitioner, at all pertinent times, was engaged in the business of selling and distributing the above mentioned preparations in interstate commerce in competition with persons, partnerships and corporations engaged in the interstate sale and distribution of other preparations; that the conditions and ailments for the treatment of which petitioner's preparations were sold and recommended were the same as those for which her competitors' preparations were sold and recommended; that petitioner, in the course and conduct of her business and as a means of furthering the interstate sale and distribution of her preparations, had made and was making the representations mentioned above; and that the representations were false, deceptive and misleading. The findings are supported by substantial evidence and hence are con-

[1] See Rule 20 (2) (d) of our rules governing appeals and Rule 5 of our rules governing petitions for review or enforcement of orders of boards or commissions.

clusive. Federal Trade Commission Act, § 5 (c), 15 U. S. C. A. § 45 (c).

Petitioner complains of the supposed action of the Commission "In rejecting outright the testimony of experts adhering to the homeopathic school of medicine and in thus making an arbitrary choice between schools of healing which are equally recognized under the law." Actually, the Commission admitted the testimony of experts who were, and experts who were not, adherents of the homeopathic school of medicine. The Commission's findings are supported in part by the testimony of experts adhering to the homeopathic school, in part by the testimony of other experts. Conflicts in the testimony were for the Commission, not this court, to resolve. *Justin Haynes & Co.* v. *Federal Trade Commission*, 2 Cir., 105 F. (2d) 988, 989; *Dr. W. B. Caldwell, Inc.* v. *Federal Trade Commission*, 7 Cir. 111 F. (2d) 889, 891. We cannot say that, in resolving such conflicts, the Commission acted arbitrarily.

Petitioner asserts that "the record fails to show that, as a result of the practices complained of, competition in interstate commerce is restricted or trade diverted in a substantial degree." Such a showing is unnecessary. That petitioner has competitors, actual and potential, is **[671]** conceded. That such competitors are likely to be injured by petitioner's unfair methods of competition is obvious. Whether or to what extent they have actually suffered such injury need not be determined. *Federal Trade Commission* v. *Balme*, 2 Cir., 23 F. (2d) 615, 621; *International Art Co.* v. *Federal Trade Commission*, 7 Cir., 109 F. (2d) 393, 397.

Petitioner complains of the rejection of certain exhibits which she offered in evidence. These exhibits are not in the record. What, if anything, they would have proved we do not know. We therefore cannot say that their rejection was improper.

Petitioner complains of the action of the Commission "In permitting its witness [Hilburn P. Covington] to refresh his memory from an alleged confidential report to the Commission without permitting petitioner to inspect and use said report at the trial." Petitioner does not claim to have been prejudiced by this action. Instead, her brief states: "Petitioner could, of course, not be prejudiced if the confidential report was not used by the Commission in reaching its conclusion." The report does not appear to have been so used. No prejudice being shown, we conclude there was none.

Order affirmed.

HEALY, *Circuit Judge*, concurring:

Although I agree that petitioner's contention must be rejected, I think it is entitled to a little more adequate statement than has been given it.

Petitioner does not question the rule that the findings of the Commission, if supported by evidence, are conclusive. She concedes that there is opinion evidence which supports the findings. Her position is that the Commission has no authority under the law to make an arbitrary choice between conflicting opinions of recognized schools of medicine. She says the rules of evidence require that "where different schools of thought exist, which are both practiced and where the objective truth of neither can be scientifically demonstrated, the correctness of the claims of one school ought not to be passed upon by opinions of adherents to another school who are hostile to it."

If the case made before the Commission squarely presented the situation assumed, I think petitioner's argument would have to be sustained; but as I read the record it does not in any realistic fashion disclose a conflict between opposing schools of practice or opinion.

Petitioner professes to be a disciple of the homeopathic school of medicine. Homeopathic doctors are said to prescribe according to principles worked out by Hahnemann and his followers a century ago. An important difference between the homeopathic and allopathic schools is said to be that the former school believes that like cures like, and that its adherents prescribe in small doses. The findings and order of the Commission can hardly be catalogued as a rejection of either of these two beliefs. Petitioner's remedies, which she advertises under names, contain usually numerous ingredients in minute quantities. There is no showing by homeopathic doctors generally that these alleged remedies, as put together by petitioner, have the support or endorsement of the homeopathic school. At most there is testimony by doctors of that school that some one or more of the ingredients used in several of the preparations are recognized as having therapeutic value. But on the whole, giving all due weight to the opinions of the homeopathic doctors, the record is not persuasive that the findings of the Commission are arbitrary in the sense argued, or that petitioner's advertised claims are not substantially misleading. In short, petitioner's theory of the case does not substantially fit the facts.

JACOB SCHACHNOW, TRADING AS MODERN HAT WORKS v. FEDERAL TRADE COMMISSION [1]

No. 7640

(Circuit Court of Appeals, Third Circuit. Apr. 2, 1941)

Order modifying, pursuant to agreement, Commission's cease and desist order in *Modern Hat Works*, Docket 2047, 31 F. T. C. 1256, 1261, requiring respondent,

[1] Not reported in Federal Reporter. For case before Commission, *see* 31 F. T. C. 1256.

his representatives, etc., in connection with offer, etc., in commerce, of hats, to cease and desist from representing that hats composed in whole or in part of used or secondhand materials are new or are composed of new materials, as therein set forth, and requiring respondent, his representatives, etc., to comply with the terms of said order as thus modified.

Mr. Bernard German, of Jersey City, N. J., for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Robert Mathis, Jr.*, special attorney, both of Washington, D. C., for the Commission.

Before MARIS, JONES, and GOODRICH, Circuit Judges.

DECREE

The petitioner herein, having filed with this Court on, to-wit, January 2, 1941, his petition to review and set aside an order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of November 2, 1940, under the provisions of Section 5 of the Federal Trade Commission Act; and a copy of said petition having been served upon the respondent herein; and said respondent having thereafter certified and filed herein, as required by law, a transcript of the entire record in the proceeding lately pending before it, in which said order to cease and desist was entered, including all the evidence taken and the report and order of said respondent; and the respondent having agreed that paragraph (1) of its said order to cease and desist may, by this Honorable Court, be modified by adding thereto the words "(e. g., 'Second-hand', 'Used', or 'Made-over')" so that, as so modified, said paragraph (1) shall read as follows:

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 (e. g., "Second-hand," "Used," or "Made-over"), 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.

and said modification being acceptable to the petitioner herein; and said parties having filed herein their joint motion asking this Honorable Court to enter a decree so modifying said order, affirming said order as so modifiedand commanding obedience to the terms thereof—

Now, therefore, it is hereby ordered, adjudged, and decreed, That said order to cease and desist be modified by adding to paragraph

(1) thereof the following, to wit: "(e. g., 'Second-hand', 'Used', or 'Made-over')" and that said order, as so modified be, and the same hereby, is affirmed.

And it is hereby further ordered, adjudged, and decreed, That the petitioner, 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, 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 (e. g., "Second-hand", "Used", or "Made-over"), 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.

And it is hereby further ordered, adjudged and decreed, That the petitioner, Jacob Schachnow, individually, and trading as Modern Hat Works, 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 he has complied with this decree.

And it is hereby further ordered, adjudged, and decreed, That the Federal Trade Commission, respondent herein, shall modify its said order to cease and desist as hereinabove set forth in this decree.

SAKS & COMPANY v. FEDERAL TRADE COMMISSION [1]

(Circuit Court of Appeals, Second Circuit. Apr. 2, 1941)

Order, in accordance with stipulation of the parties, by Circuit Judges Learned Hand and Augustus N. Hand, dismissing petition to review order of Commission in Docket 3456, 30 F. T. C. 898, 906, requiring respondent, among other things, in connection with the offer, etc., in commerce, of furs or fur products or textile fabrics, to cease and desist from misrepresenting its

[1] Not reported in Federal Reporter. For case before Commission, *see* 30 F. T. C. 898.

said products as to nature, worth or value, and composition, as in detail set forth in said order, thereafter set aside by Commission and followed by new modified order in conformance with stipulation in question.

Chadbourne, Wallace, Parke & Whiteside, of New York City, for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Robert Mathis, Jr.*, special attorney, both of Washington, D. C., for the Commission.

Before LEARNED HAND, SWAN, AUGUSTUS N. HAND, CHASE, and CLARK, Circuit Judges.

ORDER

Upon the annexed stipulation [1] by and between the attorneys for the respective parties hereto, dated March 28, 1941; it is

Ordered, adjudged, and decreed, That the petition of Saks & Company to review and set aside the order of the Federal Trade Commission, dated April 3, 1940, which appeal is now pending before this Court bearing Calendar #228, be and the same hereby is dismissed.

McKINLEY-ROOSEVELT COLLEGE OF ARTS & SCIENCES v. FEDERAL TRADE COMMISSION [2]

No. 7375

(Circuit Court of Appeals, Seventh Circuit. Apr. 17, 1941)

Order by Circuit Judge Evan A. Evans, granting motion of respondent to dismiss its petition for review of Commission's order in *McKinley-Roosevelt College of Arts & Sciences*, Docket 3571, 30 F. T. C. 1052, 1062, requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of correspondence courses of study, to cease and desist from (1) using the word "College" or the word "University" in corporate or trade name used by it in conduct of its business, etc.; (2) representing through use of said words, as aforesaid, or in catalogs, etc., that business conducted by it is a

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[1] By the terms of such stipulation, not published herewith, and in which petitioner contended that certain terms of the original order above referred to were beyond the facts alleged in the complaint and the issues formed thereon, it was agreed that, upon the dismissal of the company's petition for review, the Commission would set aside its order to cease and desist, and in lieu thereof make, enter and serve upon the respondent a modified order to cease and desist, as provided in stipulation; compliance with which provision was had by Commission order of April 15, 1941, setting aside order in question and providing for entry of modified cease and desist order in lieu thereof, which was duly entered as of same date. *See, ante*, p. 1648.

[2] Not reported in Federal Reporter. For case before Commission, *see* 30 F. T. C. 1052.

university or college or institution of higher learning; and (3) representing through use of symbols indicating academic degrees after names of members of its faculty or by other means, that such members are educators duly qualified by a higher education, when the degrees so indicated are not the result of study pursued in residence at recognized colleges or universities, duly authorized to grant the degrees indicated, etc., as in order set forth.

Mr. William R. Peacock, of Chicago, Ill., for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. W. L. Pencke*, special attorney, both of Washington, D. C., for the Commission.

ORDER

This matter coming on to be heard upon the motion of respondent, and the Court being fully advised in the premises—

It is ordered, That the motion of the respondent to dismiss the petition for review herein be, and the same hereby is granted.

STANDARD CONTAINER MANUFACTURERS' ASSOCIATION, INC., ET AL. v. FEDERAL TRADE COMMISSION [1]

No. 9253

(Circuit Court of Appeals, Fifth Circuit. Apr. 23, 1941)

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—PRICE FIXING—VALIDITY—PREREQUISITES, IN GENERAL—JURISDICTION—COMMERCE—FINDINGS AND ORDER—IF LATTER RESPONSIVE TO FORMER, AND FORMER TO COMPLAINT, AND SUPPORTED BY EVIDENCE.

If Federal Trade Commission had jurisdiction of proceeding against trade association to prohibit continuance of conspiracy to fix prices, that is, if practices Commission investigated and reprobated were in and not merely affecting interstate commerce, and Commission's findings were responsive to complaint and supported by evidence, cease and desist order could not be set aside if it was responsive to and within scope of findings.

INTERSTATE COMMERCE—FINDINGS AND ORDERS, ON REVIEW—CONCERT OF ACTION—PRICE FIXING AND OTHER RESTRAINTS—WHERE TRADE ASSOCIATION MEMBERS INTERESTED IN FIXING AND CONTROLLING PRICES IN INTERSTATE COMMERCE, IRRESPECTIVE WHETHER INDIVIDUALS ENGAGED IN INTRA- OR INTERSTATE COMMERCE, OR BOTH.

Where agreements and practices to control prices and business practices in interstate commerce were entered into and jointly engaged in by members of trade association, some of which were engaged in intrastate, some in inter-

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[1] Reported in 119 F. (2d) 262. For case before Commission, *see* 30 F. T. C. 577.

state commerce, and some in both, but all in same general business of selling containers, and all alike interested in controlling, fixing or regulating prices and practices therein, Federal Trade Commission had authority, not over prices fixed and practices carried on without agreement in state, but over agreements made in state to control and affect prices and practices both intra and interstate.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—ORDERS' SCOPE—PARTIES RESPONDENT—CONCERT OF ACTION—PRICE FIXING—TRADE ASSOCIATION MEMBERS SUBSEQUENTLY OUT OF BUSINESS OR BANKRUPT—AS NOT HARMED BY ORDER'S PROHIBITION AS WHOLLY PROSPECTIVE.

Members of trade association who had gone out of business or had taken bankruptcy were not harmed by Federal Trade Commission's cease and desist order prohibiting continuance of conspiracy to fix prices, since order was not "retrospective", but wholly "prospective" in operation.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—ORDERS' SCOPE—PARTIES RESPONDENT—CONCERT OF ACTION—PRICE FIXING—TRADE ASSOCIATION MEMBERS SUBSEQUENTLY OUT OF BUSINESS OR BANKRUPT—WHERE JURISDICTION THERETOFORE INITIALLY PROPERLY OBTAINED.

Where members of trade association were in business when proceeding by Federal Trade Commission to prevent continuance of conspiracy to fix prices was properly begun against, and jurisdiction properly obtained over, them, jurisdiction was not lost by their going out of business or taking bankruptcy, and such facts furnished no ground for setting aside cease and desist order.

METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—PRICE FIXING—DEFENSES OR JUSTIFICATIONS—REASONABLENESS.

It is not for those, who, by concert, artificially raise prices, to determine what point is within and what beyond the bounds of reason, but law prohibits price-fixing agreements and all kinds of agreements to regulate effect of free and fair competition.

METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—PRICE FIXING—DEFENSES OR JUSTIFICATIONS—ANTITRUST LAWS' GOOD OR BAD EFFECT ON SPECIFIC BUSINESS.

[263] Whether anti-trust laws had good or bad effect on business in question was not the issue Federal Trade Commission had to decide in proceeding against trade association and members to prohibit continuance of conspiracy to fix prices, but issue was whether association and members made agreements and did things they were charged with doing to raise or affect prices and business practices.

EVIDENCE—METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—PRICE FIXING—DEFENSES OR JUSTIFICATIONS—TRADE ASSOCIATION ACTIVITIES AND OFFICERS—HISTORY AND OBJECTIVES—PARTIES—PARTICIPATION OF SPECIFIC.

Evidence supported Federal Trade Commission's conclusion that container manufacturers' association as an association had as one of its prime purposes and functions, concert of action to prevent what they regarded as ruinous competition, by restoring living price conditions to industry, and that its members were convinced that the only way to do it was by price agreements, and supported such conclusion as to secretary of association and another respondent.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—ORDERS' SCOPE—PARTIES RESPONDENT—CONCERT OF ACTION—PRICE FIXING—TRADE ASSOCIATION MEMBERS' BURDEN ON RECORD SHOWING PRICE PROMULGATING ACTIVITIES BY PRESIDENT AND SECRETARY, AND MEMBER ADHERENCE.

The record showing that president of trade association was promulgating, secretary was printing and distributing price lists, and that members were adhering, or were being disciplined for not adhering, to them, it was clearly incumbent on any particular member of association complaining of Federal Trade Commission's cease and desist order as to him, to show that he refused to participate in agreements for or to adhere to price-fixing arrangements.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—ORDERS' SCOPE—PARTIES RESPONDENT—CONCERT OF ACTION—PRICE FIXING AND OTHER RESTRAINTS—AS NOT TOO INDEFINITE, ARBITRARY, OR TOO DRASTIC, WHERE NOT SELF-OPERATIVE, AND PROSPECTIVELY PROHIBITING CONCERT OF ACTION IN OBJECTIVES' ACCOMPLISHMENT.

The Federal Trade Commission's cease and desist order against trade association and members, which was not self-operative, but merely by way of protection against making agreements set standard for future conduct, and which did not prohibit individual and independent action, but concerted action for purpose of carrying out agreements by which prices are raised and conditions of doing business are fixed, was not too indefinite, arbitrary, or too drastic.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—ORDERS' SCOPE—CONCERT OF ACTION—TRADE ASSOCIATION MEMBERS AND NAMED RESPONDENTS—CLARIFICATION.

A clause of Federal Trade Commission's cease and desist order against container manufacturers' association and members which prohibited association, officers, agents and employees and named respondents from aiding, abetting or encouraging or cooperating with other respondents in doing any of acts and things prohibited by order and from doing particular acts, was amended to make it clear that clause was not intended to extend its prohibitions beyond those of prior clause.

(The syllabus, with substituted captions, is taken from 119 F. (2d) 262)

On petition by Standard Container Manufacturers' Association, Inc., and others to review and set aside cease and desist order of Commission, petition denied; order modified and, as so modified, affirmed.

Mr. F. C. Hillyer, of Jacksonville, Fla., and *Mr. Haywood H. Hillyer, Jr.*, of New Orleans, La., for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Edw. W. Thomerson* and *Mr. James W. Nichol*, special attorneys, Federal Trade Commission, and *Mr. Martin A. Morrison*, assistant chief counsel, Federal Trade Commission, all of Washington, D. C., for Commission.

Before FOSTER, HUTCHESON, and MCCORD, Circuit Judges.

HUTCHESON, *Circuit Judge:*

Petitioners, a trade association, its members, former members and officers, sue to set aside a cease and desist order of the Commission.[1] They complain of the order as invalid in whole and in part; in whole as with [264] out support in the evidence and indefinite, arbitrary and unreasonable; in part as beyond its jurisdiction, as to 18 of the petitioners, because engaged wholly in intrastate commerce, and as to four, because almost entirely so engaged. They pray; that it be set aside and dismissed in whole, or in the alternative; that it be set aside and dismissed as to 18 of the petitioners engaged wholly in intrastate commerce; four engaged mainly so; six, which have gone out of business; and one, which is now in bankruptcy; and that if not dismissed in whole, it be modified and restricted.

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[1] It is ordered that the respondents * * *, cease and desist from entering into, or carrying out, any understanding, agreement, combination or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and any other member or members of the industry, for the purpose or with the effect of restricting, restraining, or monopolizing, or eliminating competition in, the sale in interstate commerce of wooden containers used in packaging fruits and vegetables, variously described and referred to as crates, baskets, boxes, hampers, lugs, cups and trays, and the parts thereof, and as a part of such understanding agreement, combination and conspiracy from doing any of the following acts or things:

1. Agreeing to fix and maintain, or fixing and maintaining, uniform or minimum prices.

2. Agreeing to fix and maintain, or fixing and maintaining, uniform terms and conditions of sale, such as maximum discounts, brokerage fees, freight and other allowances and time limitations in contracts.

3. Agreeing to curtail, or curtailing, production of such containers, or the parts thereof or agreeing to check, or checking, the production of the mills of other parties to such an agreement to determine if such other mills have curtailed production as agreed upon.

4. Threatening, coercing or in any wise intimidating members of the industry in an effort to induce such members to become parties to said understanding, agreement, combination or conspiracy, or to induce such members to maintain the prices fixed by, or to curtail production in furtherance of, said understanding, agreement, combination or conspiracy.

5. Filing with the respondent association, Standard Container Manufacturers' Association, Inc., its officers, agents or employees, any report as to the manner and form in which any member of the industry is carrying out any agreement or understanding with reference to prices or production.

6. Reporting to or conferring with respondent James B. Adkins, or any officer, agent or employee of said respondent association, as to the prices at which said products are to be sold or as to the curtailing of the production of any of such products, or as to the failure of any member of the industry to carry out any agreement or understanding on the part of such member of the industry to maintain prices, terms and conditions of sale or to curtail production.

It is further ordered that the respondent Standard Container Manufacturers' Association, Inc., its officers, agents and employees, and the respondents, James B. Adkins, Charles P. Chazal, and Russell W. Bennett, forthwith cease and desist aiding, abetting or encouraging, or cooperating with, the respondents hereinabove named in doing any of the acts and things prohibited by this order, and more particularly collecting from or disseminating among said above named respondents, or any other member of the respondent Standard Container Manufacturers' Association, Inc., or the wooden container industry, any information as to prices, terms and conditions of sale, or curtailment of production.

It is further ordered that the respondent James B. Adkins cease and desist threatening, coercing, or, in any wise, intimidating members of the industry in an attempt to induce such members to become a party to such an understanding, agreement, combination or conspiracy, or to maintain prices, terms and conditions of sale or to curtail production in furtherance of any such understanding, agreement, combination or conspiracy.

It is further ordered that the respondents shall, within sixty (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.

The commission, replying to the jurisdictional point, insists that the proceeding is one against the Association, its members and officers, to prevent and prohibit the continuance of a conspiracy to fix prices in interstate commerce, and that its jurisdiction extends over all of the parties to the agreement, though some of them are engaged wholly in intrastate commerce. As to the claim that the order should be set aside as to those who have ceased doing business, and have taken bankruptcy, and they should be dismissed from the proceeding, the commission insists; that it is settled law that the order takes effect and is affirmed, or its affirmance is denied, not in accordance with the situation existing at the time of the hearing here, but at the time the proceeding was had before it; and that the fact that some of the respondents to the proceeding have, since its institution, gone out of business, or taken bankruptcy, is not a ground for setting the order aside.

Finally, it insists that each and every one of the findings has full support in [265] the evidence and the order is definite, reasonable and responsive thereto. No novel proceeding this, but a more or less commonplace one, the principles, controlling the question before us for decision are well settled by the authorities, and we need not concern ourselves with elaborating upon them. It is sufficient to say that if the commission has jurisdiction, that is, if the practices it investigates and reprobates are in and not merely affecting interstate commerce, *Federal Trade Commission* v. *Bunte Bros.*, 312 U. S. 349, and its findings are responsive to the complaint and supported by evidence, its order may not be set aside if it is responsive to and within the scope of the findings.

If, as petitioners seem to assume, the complaint were directed against, and the findings and order were as to, practices, exclusively in intrastate commerce, the proceeding would be beyond the jurisdiction of the commission and would have to be dismissed. But, it is not such a proceeding. The complaint charges, the evidence shows, and the findings establish, agreements and practices to control prices, and business practices in interstate commerce, entered into and jointly engaged in by members of a trade association, some of which are engaged intrastate, some in interstate commerce, and some in both, but all in the same general business of selling containers, and all alike interested in controlling, fixing or regulating prices and practices therein. In such a situation, the commission has authority not over prices fixed and practices carried on without agreement in the State, but over agreements made in the state to control and affect prices and practices both intra and interstate. It is hardly necessary to cite

authorities for this view. Some which may be cited are: *Federal Trade Comm.* v. *Standard Educational Society*, 302 U. S. 112; *National Harness Assn.* v. *Federal Trade Comm.*, 268 Fed. 705; *International Art. Co.* v. *Federal Trade Comm.*, 109 F. (2d) 393; *Chamber of Commerce* v. *Federal Trade Comm.*, 13 F. (2d) 673.

Rejecting the contention of the petitioners then, that the proceeding as to some of them has to do merely with commerce intrastate, and is beyond the jurisdiction of the commission, we proceed to a consideration of the other points, made against the order. The first of these, that some of the petitioners have gone out of business or have taken bankruptcy, may be disposed of by simply saying that the order is not retrospective, but wholly prospective in operation, and if these petitioners are really out of business to stay, they can take no harm from it. But questions of harm aside, they were in business when the proceeding was properly begun against, and jurisdiction properly obtained over, them; that jurisdiction was not lost by their going out of business or taking bankruptcy; and these facts furnish no ground for setting the order aside.

We come then to the merits of the case, whether the evidence sufficiently supports the Board's conclusions, that the Association and all its members have been guilty of unfair trade practices, in endeavoring, by concert of action to raise prices, or otherwise affect prices and practices, or whether only some, or none of them have been.

In the beginning it must be stated that petitioner's contention that action under agreement to raise prices is not in itself an unfair practice, that it must also appear that prices are unreasonably affected by the action, will not stand up under the authorities. It is settled law that it is not for those, who, by concert, artificially raise prices, to determine what point is within and what beyond the bounds of reason. The law prohibits price fixing agreements, and all kinds of agreements to regulate the effect of free and fair competition. *Federal Trade Comm.* v. *Beech Nut Co.*, 257 U. S. 441; *Federal Trade Comm.* v. *Keppel & Bros.*, 291 U. S. 304; *Butterick Publishing Co.* v. *Federal Trade Comm.*, 85 F. (2d) 522; *U. S.* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150.

Petitioners are right in saying that, in the modern climate of political opinion, with its collectivistic and cooperative currents, a great many wind currents contrary to the long accepted theory of free, unrestricted competition, are now blowing through the world. The cartels, the big and little N. R. A.'s, the government drive for scarcity and higher prices, the great labor combinations, the prohibitions against unfair price cutting, all show that competition may be no unmixed blessing. They may be right too, in their claim, that in their

trade area, they are more sinned against than sinning, that the commission in pursuing them, has made a mountain out of a molehill and has let the real culprits [266] go. But these are not reasons why the order of the commission, that they cease their concert of action, should be set aside. Self help may not go as far as agreements to uphold prices. That they were unconscious of moral wrong; that they felt they were only striving to bring about living conditions in their industry, colors not only their brief but their evidence. The very strength of their urgence: that their concert of action was in the interest of legitimate business while of great value in maintaining their thesis, that what they did was necessary to save the business and those working in it, from destruction by those pirating upon it, is however their great weakness when they are forced to meet and combat the board's essential finding that. their purposes aside, they were actually engaged in a price-fixing campaign. It stands out clearly enough in the record; that Adkins and Bennett and the members of the Association believed that what they were doing was necessary for the protection and salvation of the industry, and of the people of the state who were dependent on it: that they regarded themselves as not engaged in but as combatting acts of piracy; in short, that they regarded themselves as to an extent, public benefactors. If then, the question to be decided here, were whether upon general moral considerations, the activities of petitioners were beneficial or harmful, it might well be that Adkins' view, that ruinous price cutting was going on, and that for the protection of the industry in Florida, it was necessary to stop it by concert of action, would be found to be sound. But the law as it now stands, provides otherwise, and whether the anti-trust laws have a good or a bad effect upon the business in question, is not the issue the commission had to decide. That issue was whether the petitioners made the agreements, and did the things they were charged with doing, to raise or affect prices and business practices.

Looked at in this light, we think it may not be doubted that the evidence supports the commission's conclusion; that the association as an association had as one of its prime purposes and functions, concert of action, to prevent what they regarded as ruinous competition, by restoring living price conditions to the industry; and that its members were convinced that the only way to do it was by price agreements. The evidence compels this conclusion as to Adkins, it supports it as to Bennett, the Secretary of the Association, who, while doing lip service to his idea that there should be no open talk in the association about price fixing, printed price lists and distributed them, and it is quite sufficient to sustain the finding that he and the members of the association generally worked with and under Adkins to bring these desired conditions about.

The record showing that the president was promulgating, the secretary was printing and distributing price lists, and that the members of the association were adhering, or, were being disciplined for not adhering, to them, it is clearly incumbent upon any particular member of the association, complaining of the order as to him, to point to facts showing that his position is different from that of his association, that, in short, he refused to participate in the agreements for or to adhere to the price fixing arrangements, about which the president and the association were so busy. None of them have done this.

It remains only to consider petitioner's final complaint of the order, that it is too indefinite to furnish a safe guide to future conduct, is arbitrary and too drastic. In considering these objections, it is well to keep in mind that the order is not self-operative, it merely, by way of protection against making agreements, sets a standard for future conduct. If petitioners really want to obey it, they are in no peril from it, for except in the second clause directed at Adkins, Chazal and Bennett, it sets out clearly enough, we think, the things which are prohibited. These things are not at all individual and independent action, on the part of the respondents, but concerted action pursuant to, for the purpose, or with the intent of, carrying out agreements or understandings, by which prices are raised and conditions of doing business are fixed.

To make it clear that the second clause is not intended to extend its prohibitions beyond those of the first clause, this clause will be amended by either striking all of it after the words "prohibited by this order", or adding these words at the end of the clause, "pursuant to, for the purpose, or with the intent, of carrying out any of the agreements or understandings as herein prohibited."

The petition to set the order aside is denied. The order as herein modified is affirmed.

MANDEL BROTHERS, INC., AND MARSHALL FIELD & COMPANY v. FEDERAL TRADE COMMISSION [1]

No. 6924

(Circuit Court of Appeals, Seventh Circuit. Apr. 24, 1941)

Order, by Circuit Judges Evan A. Evans, J. Earl Major, and Otto Erner, in accordance with stipulation theretofore entered into, and decision of Circuit Court of Appeals for the Second Circuit in *Fashion Originators' Guild of America, Inc., et al.* v. *Federal Trade Commission*, 114 F. (2d) 80, 31 F. T. C. 1837, affirming, with certain modifications, the order of the Commission against said respondents; decree entered by said court thereafter,

[1] Not reported in Federal Reporter. For case before Commission, *see* 28 F. T. C. 430.

affirming such order; and Supreme Court decision on March 3, 1941, in *Fashion Originators' Guild of America, Inc., et al.* v. *Federal Trade Commission*, 312 U. S. 457, 61 S. Ct. 703, 32 F. T. C. 1856, sustaining said judgment of the Circuit Court of Appeals for the Second Circuit;

Affirming, with exception noted, Commission order in *Fashion Originators' Guild of America, Inc., et al.*, Docket 2769, 28 F. T. C. 430, and requiring respondents, their officers, etc., to cease and desist from entering into or carrying out any understanding, etc., as below set forth, (1) to refuse to purchase any women's garments from manufacturers who are not members of said Guild or do not conform to its standards, etc., (2) to comply with requirements of said Guild not to purchase or sell garments declared by it to be copies of styles or designs registered in its Bureau, (3) to comply with its request that no women's garments be purchased from manufacturers declared by it to be confirmed copyists, and (4) to comply with its requirements that any such women's garments found in respondents' stocks, declared by it as such copies, be removed from sale and returned to the manufacturer thereof; subject to certain provisos set forth with respect to copies made without consent from an "unpublished" style or design, etc.

Taylor, Miller, Busch & Boyden, of Chicago, Ill., for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. E. F. Haycraft* and *Mr. R. J. Martin*, special attorneys, all of Washington, D. C., for the Commission.

Order

It appearing to the Court that the parties hereto have entered into a stipulation providing that the above-entitled cause might be suspended by this Court until after final disposition of the case of Fashion Originators' Guild of America, Inc., et al., Petitioner, against Federal Trade Commission, Respondent No. 16581, on the calendar of the October term, 1938, April 1939 session, of the Circuit Court of Appeals for the Second Circuit, and which said stipulation further provided that upon final determination of said case either in the Circuit Court of Appeals for the Second Circuit or in the Supreme Court of the United States, an order should be entered herein conforming to said final disposition of said case, which said stipulation was accepted, approved and directed to be filed herein by order entered on April 12, 1939;

And it further appearing to this Court that the Circuit Court of Appeals for the Second Circuit did on August 24, 1940, in the case therein pending enter a decree affirming the cease and desist order entered by the Federal Trade Commission on February 8, 1939, in the matter of Fashion Originators' Guild of America, Inc., et al., Docket No. 2769, with modifications thereto, and that the Supreme Court of the United States did on March 3, 1941, affirm the judgment of the Circuit Court of Appeals for the Second Circuit;

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 February 8, 1939, be, and the same hereby is, affirmed with the exception noted at the end hereof;

And it is hereby further ordered, adjudged, and decreed, That the petitioners herein, Mandel Brothers, Inc. and Marshall Field and Company, their officers, members of their Boards of Directors and their successors, agents, servants, and employees do

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 or persons, association or corporation:

(*a*) To refuse to purchase any women's garments from manufacturers thereof who are not members of the Fashion Originators' Guild of America, Inc., or who do not conform to its standards, ethics and regulations.

(*b*) To comply with the requirement of the Fashion Originators' Guild of America, Inc., not to purchase or sell women's garments declared by it to be copies of styles or designs registered in its design registration bureau by its members.

(*c*) To comply with the request of the Fashion Originators' Guild of America, Inc., that no women's garments be purchased from manufacturers declared by it to be confirmed copyists.

(*d*) To comply with the requirements of the Fashion Originators' Guild of America, Inc., that any women's garments found in their stocks which have been declared by it to be copies of registered styles and designs of its members be removed from sale and returned to the manufacturer thereof.

(*e*) No part of the foregoing order shall apply to cases in which petitioners, their officers, members of their Boards of Directors, and their successors, agents, servants, and employees buy dresses whose style or design they know the dressmaker to have copied without consent from an "unpublished" style or design; the privilege so conferred shall, however, cease as soon as the style or design in question shall be "published;" after which petitioners, their officers, members of their Boards of Directors, and their successors, agents, servants and employees shall be free to buy dresses made after it, no matter by what means the dressmaker originally obtained access to it.

And it is hereby further ordered, adjudged, and decreed, That the petitioners as above set forth shall, within 90 days after the entry of this decree, file with the Federal Trade Commission a report in writing setting forth the manner and form in which they have complied with this decree.

THE J. L. HUDSON COMPANY v. FEDERAL TRADE COMMISSION[1]

No. 8270

(Circuit Court of Appeals, Sixth Circuit. May 7, 1941)

Order, by Circuit Judge Xen Hicks, in accordance with stipulation theretofore entered into, and decision of Circuit Court of Appeals for the Second Circuit in *Fashion Originators' Guild of America, Inc., et al.* v. *Federal Trade Commission*, 114 F. (2d) 80, 31 F. T. C. 1837, affirming, with certain modifications, the order of the Commission against said respondents; decree entered by said court thereafter, affirming such order; and Supreme Court decision on March 3, 1941, in *Fashion Originators' Guild of America, Inc., et al.* v. *Federal Trade Commission*, 312 U. S. 457, 61 S. Ct. 703, 32 F. T. C. 1856, sustaining said judgment of the Circuit Court of Appeals for the Second Circuit;

Affirming, with exception noted, Commission order in *Fashion Originators' Guild of America, Inc., et al.*, Docket 2769, 28 F. T. C. 430, and requiring respondents, their officers, etc., to cease and desist from entering into or carrying out any understanding, etc., as below set forth, (1) to refuse to purchase any women's garments from manufacturers who are not members of said Guild or do not conform to its standards, etc., (2) to comply with requirements of said Guild not to purchase or sell garments declared by it to be copies of styles or designs registered in its Bureau, (3) to comply with its request that no women's garments be purchased from manufacturers declared by it to be confirmed copyists, and (4) to comply with its requirements that any such women's garments found in respondents' stocks, declared by it as such copies, be removed from sale and returned to the manufacturer thereof; subject to certain provisos set forth with respect to copies made without consent from an "unpublished" style or design, etc.

Beaumont, Smith & Harris, of Detroit, Mich., for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. E. F. Haycraft* and *Mr. R. J. Martin*, special attorneys, all of Washington, D. C., for the Commission.

ORDER

It appearing to the Court that the parties hereto have heretofore entered into a stipulation providing that the above-entitled cause might be suspended by this Court until after final disposition of the case of Fashion Originators' Guild of America, Inc., et al., Petitioner, *v.* Federal Trade Commission, Respondent, No. 16581, on the calendar of the October term, 1938, April 1939 session, of the Circuit Court of Appeals for the Second Circuit, and which said stipula-

[1] Not reported in Federal Reporter. For case before Commission, *see* 28 F. T. C. 430.

tion further provided that upon final determination of said case either in the Circuit Court of Appeals for the Second Circuit or in the Supreme Court of the United States, an order should be entered herein conforming to said final disposition of said case, which said stipulation was accepted, approved and directed to be filed herein by order entered on the 5th day of May 1939;

And it further appearing to this Court that the Circuit Court of Appeals for the Second Circuit did on August 24, 1940, in the case therein pending, enter a decree affirming the cease and desist order entered by the Federal Trade Commission on February 8, 1939, in the matter of Fashion Originators' Guild of America, Inc., et al., Docket No. 2769, with modifications thereto, and that the Supreme Court of the United States did on March 3, 1941, affirm the judgment of the Circuit Court of Appeals for the Second Circuit;

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 February 8, 1939, be, and the same hereby is, affirmed with the exception noted at the end hereof;

And it is hereby further ordered, adjudged, and decreed, That the petitioner herein, the J. L. Hudson Company, its officers, members of its Board of Directors and their successors, agents, servants, and employees do

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 or persons, association, or corporation:

(*a*) To refuse to purchase any women's garments from manufacturers thereof who are not members of the Fashion Originators' Guild of America, Inc., or who do not conform to its standards, ethics, and regulations.

(*b*) To comply with the requirement of the Fashion Originators' Guild of America, Inc., not to purchase or sell women's garments declared by it to be copies of styles or designs registered in its design registration bureau by its members.

(*c*) To comply with the request of the Fashion Originators' Guild of America, Inc., that no women's garments be purchased from manufacturers declared by it to be confirmed copyists.

(*d*) To comply with the requirement of the Fashion Originators' Guild of America, Inc., that any women's garments found in their stocks which have been declared by it to be copies of registered styles and designs of its members be removed from sale and returned to the manufacturer thereof.

(*e*) No part of the foregoing order shall apply to cases in which petitioner, its officers, members of its board of directors and their

successors, agents, servants, and employees, buy dresses whose style or design they know the dress-maker to have copied without consent from an "unpublished" style or design; the privilege so conferred shall, however, cease as soon as the style or design in question shall be "published"; after which petitioner, its officers, members of its board of directors and their successors, agents, servants, and employees, shall be free to buy dresses made after it, no matter by what means the dressmaker originally obtained access to it.

And it is hereby further ordered, adjudged, and decreed, That the petitioner as above set forth shall, within 90 days after the entry of this decree, file with the Federal Trade Commission a report in writing setting forth the manner and form in which they have complied with this decree.

PETER SANDERS AND HARRY SANDERS, DOING BUSINESS AS THE PERFECT RECONDITIONED SPARK PLUG COMPANY, AND SAMUEL SANDERS, DOING BUSINESS AS THE ACE AUTO SUPPLY COMPANY v. FEDERAL TRADE COMMISSION [1]

No. 17337

(Circuit Court of Appeals, Second Circuit. May 28, 1941)

Order, in accordance with stipulation, as below set forth, withdrawing petition to review order of Commission in *The Perfect Reconditioned Spark Plug Co. et al.*, Docket 3392, 31 F. T. C. 212, 223, directing respondents, their representatives, etc., in connection with offer, etc., in commerce, of spark plugs, to cease and desist from offering, selling, etc., any used and reconditioned spark plugs, unless, as in order in detail set forth, words "used", "secondhand" or "reconditioned", or other words of similar import have been permanently stamped or fixed on each spark plug and notice of used, secondhand or reconditioned nature of plugs in question has been plainly printed on boxes or other containers thereof.

Mr. John Wilson Hood, of New York City, for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, of Washington, D. C., for the Commission.

STIPULATION FOR DISMISSAL

It is hereby stipulated and agreed, by and between the attorneys for the respective parties hereto, that the petition for review of the cease and desist order of the Federal Trade Commission, respondent

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[1] Not reported in Federal Reporter. For case before Commission, *see* 31 F. T. C. 212.

herein (dated June 25, 1940), filed in the office of the Clerk of this Court on the 24th day of August 1940, be withdrawn and the proceedings herein dismissed without prejudice and without costs; and that the Clerk of this Court be, and he is hereby authorized to enter an order to this effect.

JOHN WILSON HOOD,
Attorney for the Petitioners.
W. T. KELLEY,
Chief Counsel, Federal Trade Commission.

So ordered:
D. E. ROBERTS, *Clerk.*
MAY 28, 1941.
Dated May 23, 1941.

RESTRAINING AND INJUNCTIVE ORDERS OF THE COURTS UNDER THE PROVISIONS OF SECTION 13 OF THE FEDERAL TRADE COMMISSION ACT

FEDERAL TRADE COMMISSION v. UNITED DIATHERMY, INC.[1]

No. 12-178

(District Court, Southern District of New York. Dec. 28, 1940)

Judgment of preliminary injunction by District Judge Henry W. Goddard, 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 "United Short Wave Diathermy" device or apparatus recommended to lay public for individual self-application in the home in 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. James L. Baker*, special attorney, both of Washington, D. C., for the Commission.

Mr. Mortimer Cohn, of New York City, for defendant.

JUDGMENT 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, United Diathermy, Inc., a corporation, and the plaintiff appearing by its attorney, James L. Baker, and the defendant appearing by its attorney, Mortimer Cohn, Esq., of 11 West Forty-second Street, New York City, and the defendant having waived hearing herein, and having consented that this judgment be entered forthwith, and the Court having read the sworn pleadings and the affi-

[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of United Diathermy, Inc., Docket 4453, on Jan. 28, 1941, and is now pending.

davits 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 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 device or apparatus advertised as United Short Wave Diathermy, 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 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 its 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 device or apparatus in violation of the Federal Trade Commission Act, by means of which advertising the defendant has falsely represented that said device or apparatus when used by the lay public in the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home is a scientific, safe, harmless, and effective means and method of treatment for rheumatism in its various forms in all parts of the body, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble and colds, and for the alleviation of pain resulting from said ailments, 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 all facts material in the light of such representations or material with respect to consequences which may result from the use of the device or apparatus, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, and that the use of said device may result in serious and irreparable injury to the health of the user, and

It appearing to the Court, That the use of said device advertised as United Short Wave Diathermy, as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may result in further swelling of inflamed tissue, thereby increasing the congestion of the inflamed part and in spreading the inflamma-

tion to adjacent tissue and allowing the absorption of toxins, if present, in conditions of acute inflammation of the nerves, such as neuritis, neuralgia, sciatica, and lumbago, and in acute inflammation of the joints, such as bursitis, arthritis, and lumbago or rheumatic pains associated with acute inflammatory conditions of the nerves and joints, and such use of said device for the relief of pain due to neuralgia or neuritis, which are symptoms of some deeper underlying disease or cause, may fatally delay proper diagnosis and treatment.

The application of diathermy in condition of acute sinus trouble may result in further increasing congestion of the mucous membrane of the sinuses, nose and throat, causing increased absorption of bacterial toxins, if present, perpetuating the congestion of the mucous membrane.

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 said device may result in tissue destruction and severe burns.

Cancer of the spine may, and often does, evidence itself by a severe pain in the knees and the application of diathermy by the untrained layman may fatally delay proper diagnosis and treatment.

The application of diathermy for the treatment of severe pains in the extremities in the presence of advanced blood vessel changes of the legs when given in excess dosage will cause serious burns and directly lead to gangrene and necessitate amputation of the legs, 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, United Diathermy, Inc., a corporation, its officers, agents, servants, representatives, employees, and assigns, and all other persons having notice of this order be, and they hereby are, and each of them hereby is, strictly enjoined and restrained, 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 device or apparatus, designated as United Short Wave Diathermy, or any other device of substantially similar construction, whether sold under the same name or any other name, when used by the unskilled lay public, constitutes a scientific, safe, harmless and effective means and method for the treatment of, or the alleviation of pain resulting from, rheumatism in its various forms in all parts of the body, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble and colds, 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.

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 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.

FEDERAL TRADE COMMISSION v. NOLAN B. STADLEY, TRADING AS STERLING APPLIANCE COMPANY[1]

No. 15450–C

(District Court, Southern District of California. May 21, 1941)

Decree of preliminary injunction by District Judge J. F. T. O'Connor, 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 "Sterling Short Wave Diathermy" device recommended to unskilled lay public for individual self-application in the home in treatment of self-diagnosed diseases and ailments; pending

[1] Not reported in Federal Reporter.

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. James L. Baker*, special attorney, both of Washington, D. C., for the Commission.

Mr. Nolan B. Stadley, of Los Angeles, Cal., *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, Nolan B. Stadley, an individual, trading as Sterling Appliance 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 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 advertised as Sterling Short Wave Diathermy, 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 device or apparatus in violation of the Federal Trade Commission Act, by means of which advertising the defendant has falsely represented that said device or apparatus when used by the unskilled lay public in

[2] Such complaint duly issued in the matter of Sterling Appliance Co., Docket 4542, on July 18, 1941, and is now pending.

the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home is a scientific, safe, harmless and effective means and method for the relief, cure or treatment of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble and colds, painful menstruation, female disorders, ulcers, and innumerable other ailments, and for the alleviation of pain resulting therefrom, 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 all facts material in the light of such representations or material with respect to consequences which may result from the use of the device or apparatus, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, and that the use of said device may result in serious and irreparable injury to the health of the user, and

It appearing to the Court, That the use of said device, advertised as Sterling Short Wave Diathermy, as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may result in further swelling of inflamed tissue, thereby increasing the congestion of the inflamed part and in spreading the inflammation to adjacent tissue and allowing the absorption of toxins, when present, in conditions of acute inflammation of the nerves, such as neuritis, neuralgia, and sciatica; in acute inflammation of the muscles, such as lumbago and myositis; in acute inflammation of the bursae, such as bursitis; in acute inflammation of the joints, such as acute inflammatory arthritis; and in rheumatic pains associated with acute inflammatory conditions of the joints, bursae, nerves and muscles.

That short wave diathermy is contraindicated in all cases of menstruation; during pregnancy; in gastric ulcers; in acute appendicitis; in areas where there is a probable malignancy; and where there is a hemorrhagic diathesis.

That such use of this device for the relief of pain due to neuralgia or neuritis, which may often be symptoms of some deeper, underlying disease or cause (such as pains due to tuberculosis of the joints, syphilis and other infectious processes, or tumor or cancer), may cause serious injury to health and also delay proper diagnosis and treatment.

That the application of Sterling Short Wave Diathermy in treating conditions of acute sinus trouble may result in further increasing congestion of the mucous membranes of the sinuses, nose, and throat, and facilitate extension of the infections and increased absorption of bacterial toxins.

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 said device may result in severe tissue destruction and severe burns.

That cancer or tuberculosis of the spine may evidence itself by a severe pain in the knees and the application of diathermy by the untrained layman may delay proper diagnosis and treatment.

That the application of short wave diathermy for the treatment of pain in the extremities in the presence of advanced blood vessel changes of the legs or arms when given in excess dosage, will cause serious injuries and may lead to gangrene and necessitate amputation of the legs, or arms, 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, Nolan B. Stadley, an individual, trading as Sterling Appliance 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 device or apparatus, designated as Sterling Short Wave Diathermy, or any other device of substantially similar construction, whether sold under the same name or any other name, when used by the unskilled lay public, constitutes a scientific, safe, harmless, and effective means and method for the relief, cure or treatment of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble and colds, painful menstruation, female disorders, ulcers, and innumerable other ailments, and for the alleviation of pain resulting therefrom, 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;

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 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 certified copy of this decree be served upon the defendants herein.

FEDERAL TRADE COMMISSION v. GEORGE S. MOGILNER AND JAMES WALKER, TRADING AS MERIT HEALTH APPLIANCE CO.[1]

No. 1546RJ

(District Court, Southern District of California. May 21, 1941)

Decree of preliminary injunction by District Judge J. F. T. O'Connor, 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' "Merit Short Wave Diathermy" device or apparatus recommended to unskilled lay public for individual self-application in the home in treatment of self-diagnosed diseases and ailments; 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. James L. Baker*, special attorney, both of Washington, D. C., for the Commission.

Mr. George S. Mogilner and *Mr. James Walker*, both of Los Angeles, Cal., *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 defendants, George S. Mogilner and James Walker, individuals,

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[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of Merit Health Appliance Co., Docket 4543, on July 21, 1941, and is now pending.

trading as Merit Health Appliance Co., and the plaintiff appearing by its attorney, James L. Baker, and the defendants appearing and having waived hearing herein, and having consented that this decree be entered forthwith, and the Court having read the sworn pleadings and the affidavits filed with and in support thereof, and having duly considered the same, and now being fully advised in the premises, and

It appearing to the Court, That the defendants are domiciled and transact business in the Southern District of California, and

It appearing to the Court, That it has jurisdiction over the parties and subject matter hereof, and that the law and the evidence are in favor of the plaintiff and against the defendants, and

It appearing to the Court, That said defendants are engaged in the sale and distribution of a device or apparatus advertised as Merit Short Wave Diathermy, 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 product by United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and that the defendants 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, 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 device or apparatus in violation of the Federal Trade Commission Act, by means of which advertising the defendants have falsely represented that said device or apparatus when used by the unskilled lay public in the treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home is a scientific, safe, harmless and effective means and method for the relief, cure or treatment of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble and colds, painful menstruation, female disorders, chronic disorders and many other ailments, and for the alleviation of pain resulting therefrom, 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 all facts material in the light of such representations or material with respect to consequences which may result from the use of the device or apparatus, under the conditions prescribed in said advertisements, or under such conditions as are customary or

usual, and that the use of said device may result in serious and irreparable injury to the health of the user, and

It appearing to the Court, That the use of said device, advertised as Merit Short Wave Diathermy, as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may result in further swelling of inflamed tissue, thereby increasing the congestion of the inflamed part and in spreading the inflammation to adjacent tissue and allowing the absorption of toxins, when present, in conditions of acute inflammation of the nerves, such as neuritis, neuralgia, and sciatica; in acute inflammation of the muscles, such as lumbago and myositis; in acute inflammation of the bursae, such as bursitis; in acute inflammation of the joints, such as acute inflammatory arthritis; and in rheumatic pains associated with acute inflammatory conditions of the joints, bursae, nerves, and muscles.

That short wave diathermy is contraindicated in all cases of menstruation; during pregnancy; in gastric ulcers; in acute appendicitis; in areas where there is a probable malignancy; and where there is a hemorrhagic diathesis.

That such use of this device for the relief of pain due to neuralgia or neuritis, which may often be symptoms of some deeper, underlying disease or cause (such as pains due to tuberculosis of the joints, syphilis and other infectious processes, or tumor or cancer), may cause serious injury to health and also delay proper diagnosis and treatment.

That the application of The Standard and DeLuxe Models of Merit Short Wave Diathermy in treating conditions of acute sinus trouble may result in further increasing congestion of the mucous membranes of the sinuses, nose and throat, and facilitate extension of the infections and increased absorption of bacterial toxins.

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 said device may result in severe tissue destruction and severe burns.

That cancer or tuberculosis of the spine may evidence itself by a severe pain in the knees and the application of diathermy by the untrained layman may delay proper diagnosis and treatment.

That the application of short wave diathermy for the treatment of pain in the extremities in the presence of advanced blood vessel changes of the legs or arms when given in excess dosage, will cause serious injuries and may lead to gangrene and necessitate amputation of the legs, or arms, 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 issu-

ance 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 defendants George S. Mogilner and James Walker, individuals, trading as Merit Health Appliance Co., 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, pending the issuance of a complaint by the Federal Trade Commission against said defendants under Section 5 of the Federal Trade Commission Act, and until said complaint is dismissed by the Commission, or set aside by a United States Circuit Court of Appeals, or by the Supreme Court of the United States on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of Section 5 of said Act, 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 device or apparatus, designated as Merit Short Wave Diathermy, or any other device of substantially similar construction, whether sold under the same name or any other name, when used by the unskilled lay public, constitutes a scientific, safe, harmless and effective means and method for the relief, cure or treatment of rheumatism, arthritis, neuritis, bursitis, lumbago, sciatica, neuralgia, sinus trouble and colds, painful menstruation, female disorders, chronic disorders, and many other ailments, and for the alleviation of pain resulting therefrom, 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.

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 violates any of the prohibitions contained in sub-paragraph (1) hereof.

It is further ordered, That this decree of injunction be issued without bond, and that a certified copy of this decree be served upon the defendant herein.

FEDERAL TRADE COMMISSION v. CHARLES SHRADER, TRADING AS QUEEN CHEMICAL COMPANY[1]

No. 1421

(District Court, Western District of Pennsylvania. May 27, 1941)

Order for preliminary injunction by District Judge F. D. Schoonmaker, 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 "Queen Brand 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. C. Robert Mathis, Jr.*, special attorney, both of Washington, D. C., for the Commission.

Mr. Charles Shrader, of Pittsburgh, Pa., *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, Charles Shrader, an individual trading and doing business as Queen Chemical 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

It appearing to the Court, That the defendant is domiciled and transacts business in the Western District of Pennsylvania, and

It appearing to the Court, That it has jurisdiction over the parties and subject matter hereof, and that the law and the evidence are in favor of the plaintiff and against the defendant, and

It appearing to the Court, That said defendant is engaged in the sale and distribution of a drug preparation advertised as "Queen Brand

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[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of Queen Chemical Co., Docket 4570, on Aug. 15, 1941, and is now pending.

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 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 "Queen Brand Capsules" 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 is effective for long-standing and obstinate cases of delayed menstruation, and

It appearing to the Court, That the use of the said preparation, advertised as "Queen Brand Capsules," as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may produce in nonpregnant women an unnatural flow of blood from the uterus with harmful results to the health of the user. Its use may also result in gastrointestinal disturbances such as purging, enteritis, nausea and vomiting with pelvic congestion resulting in excessive uterine hemorrhages, and

It appearing to the Court, That the use of the said preparation, advertised as "Queen Brand Capsules," 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, Charles Shrader, an individual trading and doing business as Queen

Chemical Company, 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 "Queen Brand 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, or that it is an effective remedy for long-standing and obstinate cases of delayed menstruation, or which advertisement fails to reveal conspicuously that the use of said preparation under the conditions prescribed in said advertisements, or under such conditions as are customary and 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 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.

PENALTY PROCEEDINGS [1]

During the period covered by Volume 32, i. e., December 31, 1940, to May 31, 1941, five of the alleged violations of its cease and desist orders certified by the Commission to the Attorney General under the provisions of section 5 (l), Federal Trade Commission Act, were settled in the District courts. Civil penalties in the amount of $2,900 were collected. The cases so disposed of are as follows:

United States v. *Mells Manufacturing Company;* United States District Court for the Eastern District of New York; judgment entered for $600 and satisfied January 30, 1941.

The Commission had ordered the Mells Manufacturing Company, its representatives, etc., in connection with the offer, etc., in interstate commerce of candy, to cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers, for resale to retail dealers or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

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

3. Packing or assembling for sale to the public at retail an assortment of candy consisting of two packages; one package containing a number of small pieces of candy, the majority of which have one flavor, and the remaining pieces having a different flavor, and the second package containing a number of larger pieces or bars of candy, the number of which correspond to the number of pieces of candy in the first package, having a flavor different from the majority, which larger pieces or bars of candy in the second package are or may be given as prizes to purchasers procuring a small piece of candy having a flavor different from the majority.[2]

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[1] In addition to the proceedings enumerated settlement was also made in one case prior to institution of suit by payment of a penalty of $5,000.

[2] Docket 3059, November 13, 1937, 25 F. T. C. 1405, 1412.

United States v. *Montebello Distillers, Inc.;* United States District Court for the District of Maryland; judgment for $100 entered and satisfied March 22, 1941.

Montebello Distillers, Inc., its representatives, etc., in connection with the offer, etc., of whiskies, gins, and all other spirituous beverages in interstate commerce or in the District of Columbia, were ordered forthwith to cease and desist from:

Representing through the use of the word "Distillers" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (*a*) that it is a distiller of whiskies, gins, or any other spirituous beverages; (*b*) that the said whiskies, gins, or other spirituous beverages were by it manufactured through the process of distillation; or (*c*) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate or control such a place or places.[3]

United States v. *Plantation Chocolate Company, Inc.;* United States District Court for the Eastern District of Pennsylvania; judgment for $600 entered and satisfied April 2, 1941.

Respondent Plantation Chocolate Co., Inc., its representatives, etc., in connection with the offer, etc., in interstate commerce of candy and candy products, were ordered by the Commission to cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made or may be made by means of a lottery, gaming device or gift enterprise.

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

3. Packing or assembling in the same package or assortment, for sale to the public at retail, pieces of candy of uniform size and shape having centers of a different color, together with a number of larger pieces of candy, which said larger pieces of candy are to be given as

[3] Docket 2412, November 13, 1936, 23 F. T. C. 849, 860.

prizes to the purchaser procuring a piece of candy with a center of a particular color.[4]

United States v. *Chesapeake Distilling & Distributing Co.;* United States District Court for the District of Maryland; judgment for $100 entered and satisfied May 16, 1941.

Respondent Chesapeake Distilling & Distributing Company, its representatives, etc., in connection with the offering, etc., of whiskies, brandies and all other spirituous beverages in interstate commerce or in the District of Columbia, were ordered forthwith to cease and desist from:

Representing through the use of the word "Distilling" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships said products, or in any other way by words of like import, (*a*) that it is a distiller of whiskies, brandies, or other spirituous beverages; (*b*) that the said whiskies, brandies, or other spirituous beverages were by it manufactured through the process of distillation; or (*c*) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.[5]

United States v. *Mutual Printing Co. trading as Mutual Sales Promotion Service;* United States District Court for the Northern District of Illinois; judgment entered for $1,500 and satisfied May 16, 1941.

Respondent Mutual Printing Co. in its own name and right and trading as Mutual Sales Promotion Service, its representatives, etc., in connection with the offer, etc., in commerce of sales promotion cards or any other sales promotion plans or schemes, were ordered forthwith to cease and desist from:

1. Selling and distributing sales promotion cards or any other articles of merchandise so designed 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.

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[4] Docket 2777, March 4, 1937, 24 F. T. C. 778, 786.

[5] Docket 2319, November 11, 1936, 23 F. T. C. 807, 817.

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 said sales promotion cards or other lottery devices are to be or may be distributed and used.[6]

[6] Docket 3166, March 2, 1939, 28 F. T. C. 924, 933.

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